

REGULATORY CHECKLIST / CROSSWALK FOR ANALYZING FLORIDA'S AUTHORITY TO ASSUME THE CWA SECTION 404 PROGRAM

I. **404 Program Definitions and Exemptions - 40 C.F.R. Part 232:** Definitions and exemptions in 40 C.F.R. Part 232 apply to State administered programs after program approval. 40 C.F.R. § 232.1

A. **40 C.F.R. § 232.2 Definitions**

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description	Comments on State Authority
	40 CFR 232.2	<ul style="list-style-type: none"> • Discharge of Dredged Material • Discharge of Fill Material • Dredged Material • Effluent • Fill Material 	<p>373.403(13), Florida Statutes (F.S.) – Definitions</p> <p>373.403(14), F.S. – Definitions</p> <p>62-330.021, Florida Administrative Code (F.A.C.) – Definitions</p> <p>Applicant's Handbook Volume I (AH I), Section 2.0(a)59. – Definitions and Terms</p> <p>AH I, Section 2.0(a)73. – Definitions and Terms</p>	<p><i>"Dredging" means excavation, by any means, in surface waters or wetlands, as delineated in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.421.html"](1). It also means the excavation, or creation, of a water body which is, or is to be, connected to surface waters or wetlands, as delineated in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.421.html"](1), directly or via an excavated water body or series of water bodies.</i></p> <p><i>"Filling" means the deposition, by any means, of materials in surface waters or wetlands, as delineated in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.421.html"](1).</i></p> <p><i>Terms used in this chapter are defined in section 2.0 of Volume I and section 2.1 of Volume II. (terms used in 62-330, F.A.C. (ERP))</i></p> <p><i>"Material," when used in the context of "filling," means matter of any kind, such as, sand, clay, silt, rock, dredged material, construction debris, solid waste, pilings or other structures, ash, and residue from industrial and domestic processes. The term does not include the temporary use and placement of lobster pots, crab traps, or similar devices or the placement of oyster cultch pursuant to Section 597.010, F.S., and Chapter 5L-3, F.A.C. (April 9, 2007).</i></p> <p><i>"Pollution" is the presence in the outdoor atmosphere or waters of the state of any substances, contaminants, noise, or manmade or human-induced impairment of air or waters or alteration of the chemical, physical, biological, or radiological integrity of air or water in quantities or at levels which are or may be potentially harmful or injurious to human health or welfare, animal or plant life, or property or which unreasonably interfere with the enjoyment of life or property, including outdoor recreation unless authorized by applicable law. [Section 403.031(7), F.S.]</i></p>	<p>Florida has definitions for "dredging," "filling," and "material" which accomplish the same purpose as the federal definitions except that the state does not include the placement of oyster cultch for oyster production on leased aquaculture plots in the definition of "material" pertaining to "filling." Oyster cultch is typically not placed for the reasons described in the definition of "discharge of fill material," but may possibly be considered a type of artificial reef. Oyster cultch is typically placed in Section 10 waters, which are not assumable, so this difference is not expected to influence permitting in assumable waters.</p> <p>The state evaluates whether "pollution" in effluent will violate state water quality standards by requiring water quality and sediment testing for dredging projects proposed in potentially contaminated areas, and by including appropriate conditions for management of any pollution in the permit, if issued.</p> <p>Florida's definitions of dredging, filling, material, and pollution are very broad, including, and in some cases extending, the meaning of terms with similar definitions provided in federal law, within assumable waters. Add definition of activities from the Applicant's Handbook. Look into GP for oyster and tweak exemption.</p>
	40 CFR 232.2	General Permit means a permit authorizing a category of discharges of dredged or fill material under the Act. General permits are permits for categories of discharge which are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.	<p>373.118(1), F.S. – General permits; delegation</p> <p>373.4131(1)(a)4., F.S. – Statewide environmental resource permitting rules</p> <p>62-330.401(1), F.A.C. – Policy and Purpose of General Permits</p>	<p><i>The governing board may adopt rules establishing a general permit system under this chapter for projects, or categories of projects, which have, either singly or cumulatively, a minimal adverse impact on the water resources of the district. Such rules shall specify design or performance criteria which, if applied, would result in compliance with the conditions for issuance of permits established in this chapter and district rules.</i></p> <p><i>The department shall initiate rulemaking to adopt, in coordination with the water management districts, statewide environmental resource permitting rules governing the construction, alteration, operation, maintenance, repair, abandonment, and removal of any stormwater management system, dam, impoundment, reservoir, appurtenant work, works, or any combination thereof, under this part. (a) The rules must provide for statewide, consistent regulation of activities under this part and must include, at a minimum: 4. Exemptions and general permits that do not allow significant adverse impacts to occur individually or cumulatively.</i></p> <p><i>General permits authorize activities that, if conducted consistent with the permit requirements, will cause minimal individual and cumulative adverse impacts to the water resources of the Agencies. Mitigation is neither necessary nor required to offset those impacts except when provided for in the general permit. Persons using a general permit must comply with the notice requirements of Rule 62-330.402, F.A.C., the general conditions in Rule 62-330.405, F.A.C., and all of the terms, conditions, and limitations of the specific general permit.</i></p>	<p>The federal and state definitions/laws reflect the same purpose. Both require that activities authorized under general permits will not allow significant adverse individual or cumulative impacts. The state interprets "significant" (state law) to be any impact that is not "only minimal" (federal law). The similarity in interpretation is demonstrated by the fact that most of the state's existing exemptions and general permits are comparable to federal nationwide permits for the same types of activities. Most of the state's exemptions will be turned into general permits in preparation for assumption of the 404 program through rulemaking. Include definition of stormwater system from Applicant's Handbook.</p>

B. 40 C.F.R. §232.3 Exemptions

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 232.3	Activities not requiring permits	373.406, F.S. – Exemptions	Exemptions	<p>Certain projects that are exempt by state statute and rule may not be exempt from 404 permitting. Most of the state exemptions that may not be categorized as exemptions under 404 are comparable to nationwide permits for the same type of activity. We are working on rule drafts to change the exemptions that do not fit into the 404 categories into general permits. State exemptions currently do not require notification to the agency before the activity is constructed, with a few exceptions (e.g., maintenance dredging). We are awaiting clarification from EPA about whether we can adopt no-notice general permits to accomplish the same purpose, similar to those nationwide permits that do not require pre-construction notification as long as conditions are met.</p> <p>Florida has the authority to create general permits for activities that are exempt under statute (403.813(2), F.S.) - <i>The provisions of subsection (1) are superseded by general permits established pursuant to ss. [HYPERLINK "http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.118.html"] and [HYPERLINK "http://www.leg.state.fl.us/STATUTES/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.814.html"] which include the same activities. Until such time as general permits are established, or should general permits be suspended or repealed, the exemptions under subsection (1) shall remain or shall be reestablished in full force and effect.</i></p> <p>The state is working on statutory language that states any rule/statute in conflict with federal law will not apply – so if the general permits are ever repealed or expire before they are re-approved every 5 years under the 404 program, the provision that re-instates the exemptions will not apply.</p>
			403.813, F.S. – Permits issued at district centers; exceptions	Exemptions	
			62-330.020, F.A.C. – Regulated Activities	<p>(1) A permit under this chapter is not required for activities that qualify for: (a) Operation and routine custodial maintenance of projects legally in existence, provided the terms and conditions of the permit, exemption, or other authorization for such projects continue to be met, and provided the activity is conducted in a manner that does not cause violations of state water quality standards. However, this exemption shall not apply to any project that is altered, modified, expanded, abandoned, or removed; (b) An exemption listed in Rule 62-330.051, F.A.C., or in section 1.3 (District-specific exemptions) of the applicable Volume II; (c) The “grandfathering” provisions of Sections 373.4131(4), 373.414(11), (12)(a), (13), (14), (15), or (16), F.S., or (d) The “10/2” general permit for upland stormwater systems authorized in Section 403.814(12), F.S.</p> <p>(2) Unless the activity qualifies under subsection (1), above, a permit is required prior to the construction, alteration, operation, maintenance, removal, or abandonment of any new project that, by itself or in combination with an activity conducted after [October 1, 2013], cumulatively results in any of the following: (a) Any project in, on, or over wetlands or other surface waters; (b) A total of more than 4,000 square feet of impervious and semi-impervious surface areas subject to vehicular traffic; (c) A total of more than 9,000 square feet impervious and semi-impervious surface area; (d) A total project area of more than one acre;</p> <p>(e) A capability of impounding more than 40 acre-feet of water; (f) Any dam having a height of more than 10 feet, as measured from the lowest elevation of the downstream toe to the dam crest; (g) Any project that is part of a larger common plan of development or sale; (h) Any dry storage facility storing 10 or more vessels that is functionally associated with a boat launching area; (i) Any project exceeding the thresholds in section 1.2 (District-specific thresholds) of the applicable Volume II, or (j) Any modification or alteration of a project previously permitted under Part IV of Chapter 373, F.S.</p> <p>Construction and operation of the above projects are subject to the additional limitations in paragraph 3.1.4(f) of Volume I.</p> <p>(3) The following types of permits are available: (a) A general permit, as provided in Rule 62-330.052, F.A.C., and Rules 62-330.407 through 62-330.635, F.A.C. (b) An individual permit, as provided in Rule 62-330.054, F.A.C.; and, (c) A conceptual approval permit, as provided in Rule 62-330.055 or 62-330.056, F.A.C. (Thresholds for requiring an environmental resource permit)</p>	
			62-330.051, F.A.C. – Exempt Activities	Exempt activities (most build upon statutory exemptions)	
	40 CFR 232.3(b)	Exemptions Recapture Provision	62-330.050(8), F.A.C. – Procedures for Review and Agency Action on Exemption Requests	Activities conducted in accordance with an exemption under this chapter remain subject to other applicable permitting, authorization, and performance requirements of the Agencies, the Board of Trustees, and other federal, state, and local governments.	<p>Currently, the state can require a permit or pursue enforcement if an activity goes beyond the scope of an exemption, or if an exempt activity causes violations of state water quality standards or other state rules pursuant to 62-330.050(8), F.A.C. We are working on statutory language, that, if approved, will include a</p>

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					provision almost identical to the federal recapture provision.
	40 CFR 232.3(c)(1)	Agricultural (farming, silvicultural, and ranching activities)	373.406(2), F.S. – Exemptions	Notwithstanding s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.927.html"], nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0193/Sections/0193.461.html"] and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.	<p>The state currently allows new activities in wetlands, which is in <i>conflict</i> with language in 40 CFR 232.3(b), and (c)(1) prohibiting changes in use of waters of the US without a 404 permit.</p> <p>The state agricultural exemption allows “activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area.” These types of activities are limited. Agricultural, silvicultural, floricultural, and horticultural activities are subject to best management practices that are intended to reduce impacts to wetlands and surface waters (watershed protection). The Department of Agriculture and Consumer Services reviews activities in wetlands, if requested by the Department or water management district, to determine if an activity is “normal and customary.” If it is found to not be “normal and customary”, then an ERP permit is required, or if an activity is already conducted, the state may take enforcement action. Rulemaking to ensure any DACS recommendations follow federal agriculture exemption definition and state retains final decision authority for determining exemption eligibility.</p> <p>The Department recognizes that the federal standard of requiring a permit for any new activities or change in use in WOTUS will need to be met to assume 404 permitting, and we are working on draft rules/statutes to ensure that the federal standard will be met. For example, we are pursuing a statutory change that will provide that provisions of state law that conflict with the federal requirements of the dredge and fill program will not apply.</p>
			373.406(3), F.S. – Exemptions	Nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to be applicable to construction, operation, or maintenance of any agricultural closed system. However, part II of this chapter shall be applicable as to the taking and discharging of water for filling, replenishing, and maintaining the water level in any such agricultural closed system. This subsection shall not be construed to eliminate the necessity to meet generally accepted engineering practices for construction, operation, and maintenance of dams, dikes, or levees.	
			373.407, F.S. – Determination of qualification for an agricultural-related exemption	In the event of a dispute as to the applicability of an exemption, a water management district or landowner may request the Department of Agriculture and Consumer Services to make a binding determination as to whether an existing or proposed activity qualifies for an agricultural-related exemption under s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.406.html"](2). The Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement or amend an existing memorandum of agreement which sets forth processes and procedures by which the Department of Agriculture and Consumer Services shall undertake its review, make a determination effectively and efficiently, and provide notice of its determination to the applicable water management district or landowner. The Department of Agriculture and Consumer Services has exclusive authority to make the determination under this section and may adopt rules to implement this section and s.[HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.406.html"](2).	
	40 CFR 232.3(c)(2)	Maintenance of Currently Serviceable Structures and Transportation Structures	403.813(1), (c), (f), (g), (h), (j), (l), (n), (p), and (t), F.S. – Permits issued at district centers; exceptions	Several exemptions under 403.813(1), F.S., contain provisions for maintenance or repair of structures.	<p>Many of the state exemptions for maintenance include construction, alteration, repair, or operation of structures within limits determined to have no significant individual or cumulative impacts to the water resources. Any activity in the current state exemptions that cannot be exempt under 404 will be made into a general permit, subject to approval by EPA. Most such exemptions are functionally equivalent to nationwide permits for the same types of activities.</p> <p>Exemptions for repair and maintenance that comply with 404 requirements will remain in state law. General permits will be created for other activities.</p>
			62-330.020(1)(a), F.A.C. – Regulated Activities	(1) A permit under this chapter is not required for activities that qualify for: (a) Operation and routine custodial maintenance of projects legally in existence, provided the terms and conditions of the permit, exemption, or other authorization for such projects continue to be met, and provided the activity is conducted in a manner that does not cause violations of state water quality standards. However, this exemption shall not apply to any project that is altered, modified, expanded, abandoned, or removed	
			62-330.051(4)(a), (b), (c), (d), (e); (5)(e); (7)(a), (b), (c), (d), (e), (f); (9)(a), (b); (10); (12)(a), (b); (13)(b);	Several exemptions under 62-330.051, F.A.C., contain provisions for maintenance or repair of structures.	

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			(14)(c), (d), and (e), F.A.C. – Exempt Activities		
	40 CFR 232.3(c)(3)	Construction or maintenance of farm or stock ponds or irrigation ditches or the maintenance (but not construction) of drainage ditches	373.406(13), F.S. – Exemptions	<i>Nothing in this part, or in any rule, regulation, or order adopted pursuant to this part, applies to construction, alteration, operation, or maintenance of any wholly owned, manmade excavated farm ponds, as defined in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.927.html"], constructed entirely in uplands. Alteration or maintenance may not involve any work to connect the farm pond to, or expand the farm pond into, other wetlands or other surface waters. This exemption does not apply to any farm pond that covers an area greater than 15 acres and has an average depth greater than 15 feet, or is less than 50 feet from any wetlands.</i>	The activities covered under the federal exemption are also captured in state law. State law appears to be more stringent. Farm or stock ponds must be constructed entirely in uplands, limited in size, not connected to wetlands or surface waters, and must be at least 50 feet from wetlands. The exemption for maintenance of existing irrigation and drainage ditches also contains conditions for upland spoil containment or BMPs if upland spoil containment cannot be used.
			403.813(1)(g), F.S. – Permits issued at district centers; exceptions	<i>A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments: (g) The maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive, as determined by the Department of Health, pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.088.html"](1), that it will inhibit proposed insect control, then-existing spoil sites or dikes may be used, upon notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.</i>	
			62-330.020(1)(a), F.A.C. – Regulated Activities	<i>(1) A permit under this chapter is not required for activities that qualify for: (a) Operation and routine custodial maintenance of projects legally in existence, provided the terms and conditions of the permit, exemption, or other authorization for such projects continue to be met, and provided the activity is conducted in a manner that does not cause violations of state water quality standards. However, this exemption shall not apply to any project that is altered, modified, expanded, abandoned, or removed</i>	
	40 CFR 232.3(c)(4)	Construction of temporary sedimentation basins on a construction site which does not include placement of fill material into waters of the United States; also applies to basins used in land-disturbing excavation activities such as quarrying and other mining	403.814(12), F.S. – General permits; delegation (10/2 General Permit)	<i>A general permit is granted for the construction, alteration, and maintenance of a stormwater management system serving a total project area of up to 10 acres meeting the criteria of this subsection. Such stormwater management systems must be designed, operated, and maintained in accordance with applicable rules adopted pursuant to part IV of chapter 373. There is a rebuttable presumption that the discharge from such systems complies with state water quality standards. The construction of such a system may proceed without any further agency action by the department or water management district if, before construction begins, an electronic self-certification is submitted to the department or water management district which certifies that the proposed system was designed by a Florida registered professional and that the registered professional has certified that the proposed system will meet the following additional requirements: (a) The total project area involves less than 10 acres and less than 2 acres of impervious surface; (b) Activities will not impact wetlands or other surface waters; (c) Activities are not conducted in, on, or over wetlands or other surface waters; (d) Drainage facilities will not include pipes having diameters greater than 24 inches, or the hydraulic equivalent, and will not use pumps in any manner; (e) The project is not part of a larger common plan, development, or sale; and (f) The project does not: 1. Cause adverse water quantity or flooding impacts to receiving water and adjacent lands; 2. Cause adverse impacts to existing surface water storage and conveyance capabilities; 3. Cause a violation of state water quality standards; or 4. Cause an adverse impact to the maintenance of surface or ground water levels or surface water flows established pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.042.html"] or a work of the district established pursuant to s. [HYPERLINK</i>	Basins used in land-disturbing activities are typically part of an ERP Individual Permit if the combination of activities exceeds thresholds in 62-330.020, F.A.C. or the 10/2 general permit. Any project with impacts to wetlands and surface waters, where that impact does not fall into an exemption, requires a permit. There is no state exemption that would allow construction of temporary sedimentation basins in wetlands and surface waters. Also, the 10/2 general permit does not allow impacts to wetlands and surface waters. State law appears to be more stringent than federal law for temporary sedimentation basins since these activities typically require state permitting.

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				"http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.086.html"].	
			62-330.020(2), F.A.C. – Regulated Activities	(1) A permit under this chapter is not required for activities that qualify for: (2) Unless the activity qualifies under subsection (1), above, a permit is required prior to the construction, alteration, operation, maintenance, removal, or abandonment of any new project that, by itself or in combination with an activity conducted after [October 1, 2013], cumulatively results in any of the following: (a) Any project in, on, or over wetlands or other surface waters; (b) A total of more than 4,000 square feet of impervious and semi-impervious surface areas subject to vehicular traffic; (c) A total of more than 9,000 square feet impervious and semi-impervious surface area; (d) A total project area of more than one acre; (e) A capability of impounding more than 40 acre-feet of water; (f) Any dam having a height of more than 10 feet, as measured from the lowest elevation of the downstream toe to the dam crest; (g) Any project that is part of a larger common plan of development or sale; (h) Any dry storage facility storing 10 or more vessels that is functionally associated with a boat launching area; (i) Any project exceeding the thresholds in section 1.2 (District-specific thresholds) of the applicable Volume II, or (j) Any modification or alteration of a project previously permitted under Part IV of Chapter 373, F.S. Construction and operation of the above projects are subject to the additional limitations in paragraph 3.1.4(f) of Volume I.	
	40 CFR 232.3(c)(6)	Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment	373.406(2), F.S. – Exemptions	Notwithstanding s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.927.html"], nothing herein, or in any rule, regulation, or order adopted pursuant hereto, shall be construed to affect the right of any person engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land, including, but not limited to, activities that may impede or divert the flow of surface waters or adversely impact wetlands, for purposes consistent with the normal and customary practice of such occupation in the area. However, such alteration or activity may not be for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands. This exemption applies to lands classified as agricultural pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0193/Sections/0193.461.html"] and to activities requiring an environmental resource permit pursuant to this part. This exemption does not apply to any activities previously authorized by an environmental resource permit or a management and storage of surface water permit issued pursuant to this part or a dredge and fill permit issued pursuant to chapter 403. This exemption has retroactive application to July 1, 1984.	Construction and maintenance of agriculture/silviculture roads is exempt under 373.406(2), F.S., and 62-330.0511, F.A.C. Two general permits exist for the construction of mining roads. Under 373.406(2), F.S., the state currently allows activities for agriculture/silviculture roads that may impede or divert the flow of surface waters or adversely impact wetlands, if it is not the sole or predominant purpose of the activity. Qualifying wetland activities are limited because agriculture activities are subject to best management practices intended to protect wetlands and surface waters. The state currently has a noticed exemption under 62-330.0511, F.A.C. that applies to silviculture roads. This exemption is intended to describe in detail limitations for the type and size of impact that can be conducted under the exemption. The Department of Agriculture and Consumer Services has a BMP manual for state imperiled species (which includes federal listed species) that is a voluntary alternative to an incidental take permit. Those practicing agriculture are incentivized to use the BMPs because they can reduce permitting time. The state exemptions and general permits (for mining roads) address the same concerns: limiting wetland and surface water impacts and protecting listed species, however, the federal law appears to be more stringent because it does not allow take of listed species (even with an incidental take permit). We are working to ensure that the state rules are as protective or more stringent than the federal requirements. One option may be to require compliance with the listed species BMPs to qualify for the exemptions. We may consider adopting equivalent restrictions to those listed in 40 CFR
			403.927(4)(a), F.S. – Use of water in farming and forestry activities	“Agricultural activities” includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, cultivating, harvesting, fallowing, leveling, construction of access roads, placement of bridges and culverts, and implementation of best management practices adopted by the Department of Agriculture and Consumer Services or practice standards adopted by the United States Department of Agriculture’s Natural Resources Conservation Service, provided such operations are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.	
			62-330.0511, F.A.C.	No-fee Noticed Exemptions for Construction, Operation, Maintenance, Alteration, Abandonment, or Removal of Minor Silvicultural Surface Water Management Systems (see rule)	
			62-330.494, F.A.C.	General Permit for Temporary Dragline Crossings of Waterways (see rule)	
			62-330.495, F.A.C.	General Permit for Low Water Crossings for Mining Activities (see rule)	

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					232.3(6) into rule. We are also pursuing a statutory change that will provide that provisions of state law that conflict with the federal requirements of the dredge and fill program will not apply.
	40 CFR 232.3(d)	Definitions for Agricultural Exemptions <ul style="list-style-type: none">• Cultivating• Harvesting• Minor drainage• Plowing• Seeding	403.927(4)(a), F.S. – Use of water in farming and forestry activities	<i>“Agricultural activities” includes all necessary farming and forestry operations which are normal and customary for the area, such as site preparation, clearing, fencing, contouring to prevent soil erosion, soil preparation, plowing, planting, cultivating, harvesting, fallowing, leveling, construction of access roads, placement of bridges and culverts, and implementation of best management practices adopted by the Department of Agriculture and Consumer Services or practice standards adopted by the United States Department of Agriculture’s Natural Resources Conservation Service, provided such operations are not for the sole or predominant purpose of impeding or diverting the flow of surface waters or adversely impacting wetlands.</i>	The activities are listed in the definition of “agricultural activities.” The state uses the ordinary and customary meaning, usage of the trade, or dictionary definition when a specific definition is not provided in law. The definitions in federal law for cultivating, harvesting, plowing, and seeding are consistent with the state’s interpretation of these terms. “Minor drainage” as defined by federal law falls under what the state would consider “normal and customary” farming and forestry operations, but is not specifically mentioned or defined. We may consider adding an equivalent definition for “minor drainage” as it will pertain to the agricultural exemption under 404 to prevent confusion in implementing the exemptions under the 404 program.
			AH I, Section 2.0(b) – Definitions and Terms	<i>Definitions and terms that are not defined above shall be given their ordinary and customary meaning or usage of the trade or will be defined using published, generally accepted dictionaries, together with any rules and statutes of the Agencies that have additional authority over the regulated activities.</i>	

II. 404 State Program Regulations - 40 C.F.R. Part 233:

A. 40 C.F.R. Part 233, Subpart C – Permit Requirements

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.5	Sequenced guidelines for evaluating permits	AH I, section 5.0	Processing of, and Agency Action on, Applications and Notices (see Applicant’s Handbook)	<p>The state review instructions state “Criteria used in the evaluation will include Rules 62-330.075 (if the activity is located on state-owned submerged lands), 62-330.301 and 62-330.302, F.A.C., Parts II through V of this Volume, and Volume II, as applicable.” [AH I, section 5.5.4.1] In practice, the state review is like the federal sequence.</p> <p>The state will address alternatives analysis in rulemaking placing the requirements of federal law in the existing review category “Elimination or Reduction of Impacts.”</p>

B. 40 C.F.R. Part 233, Subpart D – Program Operation

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 233.30	Outlines requirements of a complete application	373.413(2), F.S. – Permits for construction or alteration	<i>(2) A person proposing to construct or alter a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works subject to such permit shall apply to the governing board or department for a permit authorizing such construction or alteration. The application shall contain the following: (a) Name and address of the applicant. (b) Name and address of the owner or owners of the land upon which the works are to be constructed and a legal description of such land. (c) Location of the work. (d) Sketches of construction pending tentative approval. (e) Name and address of the person who prepared the plans and specifications of construction. (f) Name and address of the person who will construct the proposed work. (g) General purpose of the proposed work. (h) Such other information as the governing board or department may require.</i>	<p>State requires signed and sealed drawings for activities that require engineering or professional design as part of our “reasonable assurances” that the activity will function as proposed and will not adversely affect public health and safety (62-330.301 and 302, F.A.C.) – this requirement is more stringent than the federal requirement.</p> <p>The state does not request a list of authorizations required by other federal, interstate, state, or local agencies for the work, including any approvals or denials already made, but is not prohibited from doing so.</p> <p>Rulemaking will be done to address addition of application and notification requirements to meet 404 assumption requirements.</p>
			62-330.060, F.A.C. – Content of Applications for Individual and Conceptual Approval Permits	<p><i>Materials to include in an application or notice for a permit are described below. Applicants are encouraged to have a pre-application meeting or discussion with Agency staff prior to submitting the application or notice.</i></p> <p><i>(1) An application for an individual permit or conceptual approval permit shall be made on Form 62-330.060(1), “Joint Application for Individual And Conceptual Environmental Resource Permit/Authorization to Use State-Owned Submerged Lands/Federal Dredge and Fill Permit,” including the information required in the applicable Sections A through H [October 1, 2013], incorporated by reference herein ([HYPERLINK "http://www.flrules.org/Gateway/reference.asp?No=Ref-03189"]), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C., or by use of the equivalent e-application form of the applicable Agency.</i></p> <p><i>(2) The application must include all material requested in the application form; the processing fee in accordance with Rule 62-330.071, F.A.C.; and other information needed to provide reasonable assurance that the proposed activities meet the conditions for issuance in Rule 62-330.301, F.A.C., the additional conditions for issuance in Rule 62-330.302, F.A.C., and the Applicant’s Handbook.</i></p> <p><i>(3) The applicant must certify that it has sufficient real property interest over the land upon which the activities subject to the application will be conducted, as required in Section A of Form 62-330.060(1) and Section 4.2.3(d) of the Applicant’s Handbook Volume 1. The applicant or the applicant’s authorized agent must sign Part 4.A. of the application, and the applicant must sign Part 4.B. If the applicant’s authorized agent signs Part 4.A, the applicant also must sign Part 4.C.</i></p> <p><i>(4) An application for an individual permit also constitutes an application to operate and maintain the project. The application must specify the entity that will operate and maintain the project. If the applicant proposes an entity other than the current owner to operate and maintain the proposed project, documentation must be included demonstrating how such entity will meet the requirements of sections 12.3 through 12.3.3 of Volume I. A homeowner’s or property owner’s association (“HOA” or “POA,” respectively) draft association documents designating the HOA or POA as the operating entity, and prepared in</i></p>	

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				conformance with sections 12.3 through 12.3.3 of Volume I, shall satisfy this requirement. This provision of the association documents may not be modified without a permit modification in accordance with Rule 62-330.315, F.A.C.	
			62-330.402, F.A.C. – Submittal and Processing of General Permits	<p>(1) A person wishing to construct, operate, maintain, alter, abandon, or remove projects under a general permit shall provide notice using Form 62-330.402(1), “Notice of Intent to Use an Environmental Resource General Permit,” [October 1, 2013], incorporated by reference herein ([HYPERLINK "https://www.flrules.org/Gateway/reference.asp?No=Ref-02507"]), a copy of which may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C. The notice must be received by the applicable Agency at least 30 days prior to initiating the activities authorized by the general permit, or at such other time as specified in the general permit.</p> <p>(2) The notice must include the processing fee prescribed in Rule 62-330.071, F.A.C. If a single notice includes more than one general permit, a separate fee shall be required for each general permit.</p> <p>(3) The specific procedures of a general permit shall govern if they differ from the procedures in this rule.</p> <p>(4)(a) Within 30 days of receiving Form 62-330.402(1), the Agency shall determine whether the activity qualifies for a general permit. The person may conduct the activities if the Agency fails to request additional information within this period. (b) If the notice does not qualify for a general permit due to errors or omissions, the Agency shall, within 30 days of its receipt, provide the person 60 days to amend the notice. An additional processing fee will not be required if the person submits additional information demonstrating compliance with the general permit within that 60 days. (c) If the activities do not qualify for a general permit, the processing fee submitted for the general permit shall be applied to the processing fee required for an individual or conceptual approval permit if the person applies for such permit within 60 days of the Agency’s determination of non-qualification.</p> <p>(5) The Agency will place Notice of the proposed use of a general permit on the Agency website within 10 days of receipt of the request.</p> <p>(6) At their discretion, persons qualifying for a general permit may publish a notice of qualification to use a general permit, in a newspaper of general circulation in the affected area. The Agency will not publish, or require the person to publish, such notice.</p>	
			AH I, section 1.0 – Introduction	Part IV of Chapter 373, F.S., regulates the construction, alteration, operation, maintenance, abandonment and removal (hereinafter referred to as “activities”) of stormwater management systems, dams, impoundments, reservoirs, works and appurtenant works (hereinafter referred to as “projects”). Such projects include dredging and filling in wetlands and other surface waters, as those terms are defined in Sections 373.403(13) and (14), F.S.	
			AH I, section 4.0	Preparation and Submittal of Applications and Notices (see Applicant’s Handbook)	
	40 CFR 233.31	If proposed discharge may affect integrity of waters of any other states other than the state in which the discharge occurs, Director shall provide an opportunity for such State(s) to submit written comments. Reason for not accepting these recommendations must be submitted to EPA for approval	380.23, F.S. – Federal consistency	Federal coordination (Coastal Zone Management/Water Quality Certification; see statute)	The state typically depends on electronic notification methods. DEP uses the Permit Application Subscription Service (PASS) to notify interested parties of submitted applications. Each DEP and WMD district office and delegated local government offices also publishes notice of projects likely to cause heightened public concern on their respective websites. Rulemaking will be done to require notification of neighboring states or tribes when a project may affect the waters of the state or tribe. We will work on getting appropriate contact information for notification purposes.
			62-330.062, F.A.C. – Water Quality Certification and Costal Zone Consistency Concurrence	<p>(1) A State Water Quality Certification under Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, shall be provided as described below. (a) A complete application for an individual or conceptual approval permit shall constitute an application for certification of compliance with state water quality standards where necessary. Issuance of such a permit shall constitute certification of compliance with water quality standards, unless water quality certification is waived in accordance with paragraph (1)(c), below. (b) State water quality certification is granted when an activity meets all the terms and conditions of a general permit under Rule 62-330.052, F.A.C., and the applicable Rules 62-330.401 through 62-330.635, F.A.C. (c) State water quality certification is waived for activities: 1. That are not regulated under Rule 62-330.020, F.A.C. 2. That are exempt under Rule 62-330.051 or 62-330.0511, F.A.C. 3. That require net improvement of water quality under Section 373.414(1)(b), F.S. 4. That require issuance of a variance of state water quality standards under Section 120.542 or 373.414(17), F.S. 5. In which the individual or conceptual approval permit cannot be issued or denied within 180 days of the date the application is deemed complete by the Agency.</p> <p>(2) A complete application for an individual or conceptual approval permit for activities located in or seaward of coastal counties, and, in whole or in part, in, on, or over wetlands or other surface waters, shall also constitute a request for the State’s concurrence that the activities are consistent with the enforceable policies included in the Florida Coastal Management Program (FCMP) under the “Coastal Zone Management Act” (CZMA), 16 U.S.C. Sections 1451-1466, and its implementing regulations, 15 C.F.R. Part 930. In accordance with Section 380.23, F.S.: (a) Qualification for a general permit, or issuance of an individual or conceptual approval permit shall constitute the state’s concurrence that the activity is consistent with the enforceable policies included in the FCMP; (b) Applications for federally permitted or licensed activities that qualify for an</p>	

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				<p><i>exemption under Section 373.406 or 403.813(1), F.S., and this chapter, or the "10/2" general permit under Section 403.814(12), F.S., are not eligible to be reviewed for federal consistency with Part IV of Chapter 373, F.S. The U.S. Army Corps of Engineers (Corps) or any designated Federal, State or local agency administering general permits on behalf of the Corps under 33 C.F.R. Section 325.2(b)(2) may presume such exempt activities are consistent with the permitting Agency's authorities within the FCMP, provided the activity receives any applicable authorization to use and occupy state-owned submerged lands under Chapter 253, F.S., and, as applicable, Chapter 258, F.S.</i></p>	
			AH I, section 5.5.2.3 – Publishing Notice of Receipt of an Application for an Individual Permit	<p><i>(a) Upon receipt by the District of an application for an individual permit to construct or alter a dam, impoundment, reservoir, or appurtenant work, it shall, cause a notice of receipt of the application to be published in a newspaper, as defined in Chapter 50, F.S., having general circulation within the affected area in accordance with Sections 373.116, F.S., 373.118(3), 373.146, and 373.413(3), F.S. In addition, the District may also publish such notice on its website.</i></p> <p><i>(b) When DEP processes the application, it may publish notice on its website if DEP determines that the activities are reasonably expected to result in a heightened public concern or likelihood of request for administrative proceedings. DEP will base that determination on the size, potential effect on the environment or the public, potential controversial nature, and the location of the activities.</i></p> <p><i>(c) For applications processed by any Agency, the Agency will provide a notice of receipt of an application to any person who has filed a written request for notification of any pending applications affecting a designated area. Such notice will contain the name and address of the applicant; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity; a depiction of the proposed activity; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule. Such persons have certain rights to comment on or object to applications as they are being processed. Again, applicants are not responsible for performing this distribution. Persons who wish to have their names placed on that mailing list may do so by contacting the local office of the Agency. A list of pending applications and their current status also may be viewed at [HYPERLINK "http://tlhora6.dep.state.fl.us/www_pa/pa_statewide_count.asp"] (for DEP), or at the Internet site of the applicable District.</i></p> <p><i>(d) When noticing is required under Section 253.115, F.S., for activities requiring a lease or easement in, on, or over state-owned submerged lands, the Agency, as staff to the Board of Trustees of the Internal Improvement Trust Fund, is required to provide notice of all property owners within a 500-foot radius of the proposed lease or easement boundary. In such a case, the applicant will be required to forward to the Agency a list of names and addresses from the latest county tax assessment roll in mailing label format. In lieu of the Agency providing notice of application for lease or easement, an applicant may elect to send the notice, provided the notice is sent by certified mail, with the return-receipt card addressed to DEP or District, as applicable.</i></p>	
	40 CFR 233.32	Outlines the applicability, timing, method, and content of public notices	120.525, F.S. – Meetings, hearings, and workshops	<p><i>(1) Except in the case of emergency meetings, each agency shall give notice of public meetings, hearings, and workshops by publication in the Florida Administrative Register and on the agency's website not less than 7 days before the event. The notice shall include a statement of the general subject matter to be considered.</i></p> <p><i>(2) An agenda shall be prepared by the agency in time to ensure that a copy of the agenda may be received at least 7 days before the event by any person in the state who requests a copy and who pays the reasonable cost of the copy. The agenda, along with any meeting materials available in electronic form excluding confidential and exempt information, shall be published on the agency's website. The agenda shall contain the items to be considered in order of presentation. After the agenda has been made available, a change shall be made only for good cause, as determined by the person designated to preside, and stated in the record. Notification of such change shall be at the earliest practicable time.</i></p> <p><i>(3) If an agency finds that an immediate danger to the public health, safety, or welfare requires immediate action, the agency may hold an emergency public meeting and give notice of such meeting by any procedure that is fair under the circumstances and necessary to protect the public interest, if: (a) The procedure provides at least the procedural protection given by other statutes, the State Constitution, or the United States Constitution. (b) The agency takes only that action necessary to protect the public interest under the emergency procedure. (c) The agency publishes in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency findings of immediate danger, necessity, and procedural fairness shall be judicially reviewable.</i></p>	<p>Currently, public notice of a hearing must be given: 30 days before hearing (fed); at least 7 days before hearing (state).</p> <p>State notices by email through P.A.S.S. and through our website. 40 CFR 233.32 requires: mailed notice to any agency with jurisdiction over the site, the applicant, adjacent property owners, and any state whose waters may be affected by the proposed discharge + one other way – our websites should cover that.</p> <p>The state will address 404 notification requirements through rulemaking.</p>

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			120.54, F.S. – Rulemaking	Administrative Procedure Act (hearing and rulemaking notice requirements; see statute)	
			Chapter 62-110, F.A.C.	Exceptions to the Uniform Rules of Procedure (rulemaking timeframes, hearings, petitions, noticing requirements, notices of application; see rule)	
			62-110.106(10)(d), F.A.C. – Decisions Determining Substantial Interests	<i>(d) In issuing notices on permits or administrative orders under a federally delegated or approved program, the Department shall follow the procedures approved by the federal government for the Department's implementation of the program: Rule 62-210.350 of the F.A.C., for air quality programs, Rule 62-528.315, F.A.C., for the underground injection control program, Rule 62-620.550, F.A.C., for the National Pollutant Discharge Elimination System program, and subsection 62-730.220(9) and 62-730.220(11), F.A.C., for the program regulating hazardous wastes. In general, those rules require that the Department or the applicant give public notice that a draft permit (or an order that is not the result of a hearing under Section 120.569 of the Florida Statutes) has been prepared, including a statement whether a public meeting has been scheduled on the permit or order. Public notice of such a permit or order shall allow at least thirty days for public comment for air, underground injection control, and national pollution discharge elimination system permits, and forty-five days for such public comment on hazardous waste permits. If a public meeting on such a permit or order is scheduled, public notice of the meeting shall be given at least thirty days before the meeting. The two notices may be combined.</i>	
			AH I, section 5.5.2.3	<p><i>(a) Upon receipt by the District of an application for an individual permit to construct or alter a dam, impoundment, reservoir, or appurtenant work, it shall, cause a notice of receipt of the application to be published in a newspaper, as defined in Chapter 50, F.S., having general circulation within the affected area in accordance with Sections 373.116, F.S., 373.118(3), 373.146, and 373.413(3), F.S. In addition, the District may also publish such notice on its website.</i></p> <p><i>(b) When DEP processes the application, it may publish notice on its website if DEP determines that the activities are reasonably expected to result in a heightened public concern or likelihood of request for administrative proceedings. DEP will base that determination on the size, potential effect on the environment or the public, potential controversial nature, and the location of the activities.</i></p> <p><i>(c) For applications processed by any Agency, the Agency will provide a notice of receipt of an application to any person who has filed a written request for notification of any pending applications affecting a designated area. Such notice will contain the name and address of the applicant; a brief description of the proposed activity, including any mitigation; the location of the proposed activity, including whether it is located within an Outstanding Florida Water or aquatic preserve; a map identifying the location of the proposed activity; a depiction of the proposed activity; a name or number identifying the application and the office where the application can be inspected; and any other information required by rule. Such persons have certain rights to comment on or object to applications as they are being processed. Again, applicants are not responsible for performing this distribution. Persons who wish to have their names placed on that mailing list may do so by contacting the local office of the Agency. A list of pending applications and their current status also may be viewed at [HYPERLINK "http://tlhora6.dep.state.fl.us/www_pa/pa_statewide_count.asp"] (for DEP), or at the Internet site of the applicable District.</i></p> <p><i>(d) When noticing is required under Section 253.115, F.S., for activities requiring a lease or easement in, on, or over state-owned submerged lands, the Agency, as staff to the Board of Trustees of the Internal Improvement Trust Fund, is required to provide notice of all property owners within a 500-foot radius of the proposed lease or easement boundary. In such a case, the applicant will be required to forward to the Agency a list of names and addresses from the latest county tax assessment roll in mailing label format. In lieu of the Agency providing notice of application for lease or easement, an applicant may elect to send the notice, provided the notice is sent by certified mail, with the return-receipt card addressed to DEP or District, as applicable.</i></p>	

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	40 CFR 233.33	A public hearing shall be held whenever the Director determines there is a significant degree of public interest in the application. Any interested person may request a public hearing.	62-110.106(6), F.A.C. – Decisions Determining Substantial Interests	(6) <i>Notice of Application.</i> Publication of a notice of application shall be required for those projects that, because of their size, potential effect on the environment or natural resources, controversial nature, or location, are reasonably expected by the Department to result in a heightened public concern or likelihood of request for administrative proceedings. If required, the notice shall be published by the applicant one time only within fourteen days after a complete application is filed and shall contain the name of the applicant, a brief description of the project and its location, the location of the application file, and the times when it is available for public inspection. The notice shall be prepared by the Department and shall comply with the following format: <i>Notice of Application</i> The Department of Environmental Protection announces receipt of an application for permit from [name of applicant] to [brief description of project]. This proposed project will be located at [location] in [city, if applicable] in [county]. This application is being processed and is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at [name and address of office]. A notice of application for an environmental resource permit shall also contain the information required by Sections 373.413(3)-(4) of the Florida Statutes.	The state has authority to hold public meetings if the Director determines there is a significant degree of public interest in the application. In addition, 62-110.106(10)(d), F.A.C., was implemented to fulfill federal notice requirements for other federally delegated or approved programs, but does not include 404/ERP. The state will address 404 public hearing requirements, if not already met in existing rule, through rulemaking.
			62-110.106(10)(d), F.A.C. – Decisions Determining Substantial Interests	(d) In issuing notices on permits or administrative orders under a federally delegated or approved program, the Department shall follow the procedures approved by the federal government for the Department's implementation of the program: Rule 62-210.350 of the F.A.C., for air quality programs, Rule 62-528.315, F.A.C., for the underground injection control program, Rule 62-620.550, F.A.C., for the National Pollutant Discharge Elimination System program, and subsection 62-730.220(9) and 62-730.220(11), F.A.C., for the program regulating hazardous wastes. In general, those rules require that the Department or the applicant give public notice that a draft permit (or an order that is not the result of a hearing under Section 120.569 of the Florida Statutes) has been prepared, including a statement whether a public meeting has been scheduled on the permit or order. Public notice of such a permit or order shall allow at least thirty days for public comment for air, underground injection control, and national pollution discharge elimination system permits, and forty-five days for such public comment on hazardous waste permits. If a public meeting on such a permit or order is scheduled, public notice of the meeting shall be given at least thirty days before the meeting. The two notices may be combined.	
	40 CFR 233.34	In making the decision on applications, Director shall review for compliance with 404(b)(1) guidelines, shall consider all comments received and make those comments a part of the official record on the application, and shall prepare a written determination on each application outlining his decision and rationale. This record is open to the public	119.021, F.S.	Custodial requirements: maintenance, preservation, and retention of public records (see statute)	Currently, all comments received are considered a part of the file, and must be retained per 119.021, F.S. These files are publicly available to view using Oculus, our Nexus database, or any of the water management websites or by request to the agency. All comments are considered during review. 120.60(3), F.S., requires that all agency actions state with particularity "the grounds or basis for the issuance or denial of the license." The agencies create a "technical staff report" or "basis of issuance" (same thing, different names) and place it in the file upon issuance or denial of the permit. State law meets the federal requirement.
			120.60(3), F.S. – Licensing	(3) Each applicant shall be given written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice shall be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, inform the recipient of any administrative hearing pursuant to ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.569.html"] and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.57.html"] or judicial review pursuant to s.[HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.68.html"] which may be available, indicate the procedure that must be followed, and state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.	
			AH I, section 5.0	Processing of, and Agency Action on, Applications and Notices (see Applicant's Handbook)	
	40 CFR 233.36	With conditions, Director may reevaluate the circumstances and conditions of a permit on his own motion or at the request of a third party, if he believes sufficient cause exist.	120.60(5), F.S. – Licensing	(5) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the entry of a final order, the agency has served, by personal service or certified mail, an administrative complaint which affords reasonable notice to the licensee of facts or conduct which warrant the intended action and unless the licensee has been given an adequate opportunity to request a proceeding pursuant to ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.569.html"] and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-	The state statutes appear to meet the federal requirement.

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				0199/0120/Sections/0120.57.html"]. When personal service cannot be made and the certified mail notice is returned undelivered, the agency shall cause a short, plain notice to the licensee to be published once each week for 4 consecutive weeks in a newspaper published in the county of the licensee's last known address as it appears on the records of the agency. If no newspaper is published in that county, the notice may be published in a newspaper of general circulation in that county.	
			373.429, F.S. – Revocation and modification of permits	The governing board or the department may revoke or modify a permit at any time if it determines that a stormwater management system, dam, impoundment, reservoir, appurtenant work, or works has become a danger to the public health or safety or if its operation has become inconsistent with the objectives of the district. The affected party may file a written petition for hearing no later than 14 days after notice of revocation or modification is served. If the executive director of the district or the division determines that the danger to the public is imminent, he or she may order a temporary suspension of the construction, alteration, or operation of the works until the hearing is concluded, or may take such action as authorized under s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.439.html"].	

C. 40 C.F.R. Part 233, Subpart E – Compliance and Enforcement

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 233.40	State shall maintain program designed to identify persons who have violated law in the past. Director and State officers shall have authority to enter site in order to copy records, inspect, monitor, or investigate compliance, and shall conduct these inspections in a manner that will produce evidence admissible in an enforcement proceeding. State shall also maintain a program for receiving and ensuring consideration of publicly submitted information about violations	373.129, F.S. – Maintenance of actions	The department, the governing board of any water management district, any local board, or a local government to which authority has been delegated pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.103.html"](8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes: (1) To enforce rules, regulations, and orders adopted or issued pursuant to this law. (2) To enjoin or abate violations of the provisions of this law or rules, regulations, and orders adopted pursuant hereto. (3) To protect and preserve the water resources of the state. (4) To defend all actions and proceedings involving its powers and duties pertaining to the water resources of the state. (5) To recover a civil penalty for each offense in an amount not to exceed \$10,000 per offense. Each date during which such violation occurs constitutes a separate offense. (a) A civil penalty recovered by a water management district pursuant to this subsection shall be retained and used exclusively by the water management district that collected the money. A civil penalty recovered by the department pursuant to this subsection must be deposited into the Water Quality Assurance Trust Fund established under s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0376/Sections/0376.307.html"]. (b) A local government that is delegated authority pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.103.html"](8) may deposit a civil penalty recovered pursuant to this subsection into a local water pollution control program trust fund, notwithstanding the provisions of paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violation of requirements relating to water quantity may be used only to purchase lands and make capital improvements associated with surface water management, or other purposes consistent with the requirements of this chapter for the management and storage of surface water. (6) To recover investigative costs, court costs, and reasonable attorney fees. (7) Enforce the provisions of part IV of this chapter in the same manner and to the same extent as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.430.html"], [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-	The state has the authority to enter the site. We have a compliance database that identifies past violators. The state also has a compliance assurance program and regularly receives, logs, and investigates publicly submitted information on violations. State law and procedures/programs meet the federal requirements.

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				<p>0499/0403/Sections/0403.121.html"](1) and (2), [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.131.html"], [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.141.html"], and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.161.html"].</p> <p>(8) In conflicts arising where a water management district is a party to litigation against another governmental entity, as defined in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0164/Sections/0164.1031.html"], a district has an affirmative duty to engage in alternative dispute resolution in good faith as required by chapter 164.</p>	
		373.430, F.S. – Prohibitions, violation, penalty, intent		<p>(1) It shall be a violation of this part, and it shall be prohibited for any person: (a) To cause pollution, as defined in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.031.html"](7), except as otherwise provided in this part, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property. (b) To fail to obtain any permit required by this part or by rule or regulation adopted pursuant thereto, or to violate or fail to comply with any rule, regulation, order, or permit adopted or issued by a water management district, the department, or local government pursuant to their lawful authority under this part. (c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this part or by any permit, rule, regulation, or order issued under this part.</p> <p>(2) Whoever commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.129.html"].</p> <p>(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree, punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](3)(e) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g), by a fine of not more than \$50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.</p> <p>(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](4)(b) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g), by a fine of not more than \$5,000 or 60 days in jail, or by both, for each offense.</p> <p>(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree, punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](4)(a) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g), by a fine of not more than \$10,000 or by 6 months in jail, or by both, for each offense.</p>	

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				<p>(6) It is the intent of the Legislature that the civil penalties imposed by the court be of such amount as to ensure immediate and continued compliance with this section.</p> <p>(7) All moneys recovered under the provisions of this section shall be allocated to the use of the water management district, the department, or the local government, whichever undertook and maintained the enforcement action. All monetary penalties and damages recovered by the department or the state under the provisions of this section shall be deposited into the Water Quality Assurance Trust Fund. All monetary penalties and damages recovered pursuant to this section by a water management district shall be retained and used exclusively within the territory of the water management district which collected the money. All monetary penalties and damages recovered pursuant to this subsection by a local government to which authority has been delegated pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.103.html"](8) shall be used to enhance surface water improvement or pollution control activities.</p>	
			403.121, F.S.	Enforcement; procedure; remedies (see statute)	
			62-4.160(7), F.A.C. – Permit Conditions	<p>(7) The permittee, by accepting this permit, specifically agrees to allow authorized Department personnel, upon presentation of credentials or other documents as may be required by law and at reasonable times, access to the premises where the permitted activity is located or conducted to: (a) Have access to and copy any records that must be kept under conditions of the permit; (b) Inspect the facility, equipment, practices, or operations regulated or required under this permit; and (c) Sample or monitor any substances or parameters at any location reasonably necessary to assure compliance with this permit or Department rules. Reasonable time may depend on the nature of the concern being investigated.</p>	
			62-330.302(2), F.S. – Additional Conditions for Issuance of Individual and Conceptual Approved Permits	<p>(2) When determining whether an applicant has provided reasonable assurances that the permitting standards of this chapter will be met, the Agency shall consider the applicant's violation of any rules adopted pursuant to Sections 403.91 through 403.929, F.S. (1984 Supp.), as amended, or Part IV, Chapter 373, F.S., and efforts taken by the applicant to resolve these violations.</p>	
			AH I, section 1.7 – Permission to Inspect, Monitor and Sample	<p>Each application must include permission signed by the landowner, easement or lessee holder, or their legal designee that Agency staff may access the property where the proposed activity is located for purposes of inspecting, sampling, and monitoring the land subject to the application to determine whether the activity can meet (and if a permit is issued, is meeting) permitting criteria and permit conditions. If this is not possible, the applicant must supply the Agency with written authorization through other means (such as obtaining permission from leases and easement holders) for staff to enter onto, inspect, and conduct sampling of the site. This is necessary to prevent claims of trespass, and to ensure the applicant, and potential permittee, has approval from the entity that has sufficient real property interest over the land subject to the application to construct, alter, operate, and maintain, or remove, the project.</p> <p>In the case of an easement, the easement must specifically provide for the right of governmental entities to be on the lands subject to the easement for such purposes as compliance, or such right must flow through necessity from the explicit grant of the easement.</p> <p>Each permit is subject to the condition that Agency authorized staff, upon proper identification, will have permission to enter, inspect and observe, and collect samples of the activity to ensure compliance with the approved plans and specifications included in the permit. See Part 4 of Form 62-330.060(1) for additional information.</p>	
	40 CFR 233.41	State shall have authority to restrain, sue to enjoin any threatened or continuing violation, and assess or sue to recover civil penalties and seek criminal remedies.	Chapter 120, F.S.	Florida Administrative Procedure Act (see statute)	The state has the authority to restrain, sue to enjoin, and assess or sue to recover civil penalties and criminal remedies.
			373.129, F.S. – Maintenance of actions	<p>The department, the governing board of any water management district, any local board, or a local government to which authority has been delegated pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.103.html"](8), is authorized to commence and maintain proper and necessary actions and proceedings in any court of competent jurisdiction for any of the following purposes:</p> <p>(1) To enforce rules, regulations, and orders adopted or issued pursuant to this law.</p> <p>(2) To enjoin or abate violations of the provisions of this law or rules, regulations, and orders adopted pursuant hereto.</p> <p>(3) To protect and preserve the water resources of the state.</p> <p>(4) To defend all actions and proceedings involving its powers and duties pertaining to the water resources of the state.</p>	<p>There is a specific penalty per violation which depends upon certain factors, and there is a separate per day penalty. This structure does allow us to assess an equivalent or greater penalty.</p> <p>The state has a greater range of penalties at its discretion and can meet or exceed the federal penalty amounts.</p>

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				<p>(5) To recover a civil penalty for each offense in an amount not to exceed \$10,000 per offense. Each date during which such violation occurs constitutes a separate offense. (a) A civil penalty recovered by a water management district pursuant to this subsection shall be retained and used exclusively by the water management district that collected the money. A civil penalty recovered by the department pursuant to this subsection must be deposited into the Water Quality Assurance Trust Fund established under s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0376/Sections/0376.307.html"]. (b) A local government that is delegated authority pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.103.html"](8) may deposit a civil penalty recovered pursuant to this subsection into a local water pollution control program trust fund, notwithstanding the provisions of paragraph (a). However, civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violations of state water quality standards may be used only to restore water quality in the area that was the subject of the action, and civil penalties that are deposited in a local water pollution control program trust fund and that are recovered for violation of requirements relating to water quantity may be used only to purchase lands and make capital improvements associated with surface water management, or other purposes consistent with the requirements of this chapter for the management and storage of surface water.</p> <p>(6) To recover investigative costs, court costs, and reasonable attorney fees.</p> <p>(7) Enforce the provisions of part IV of this chapter in the same manner and to the same extent as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.430.html"], [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.121.html"](1) and (2), [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.131.html"], [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.141.html"], and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.161.html"].</p> <p>(8) In conflicts arising where a water management district is a party to litigation against another governmental entity, as defined in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0164/Sections/0164.1031.html"], a district has an affirmative duty to engage in alternative dispute resolution in good faith as required by chapter 164.</p>	
			373.430, F.S. – Prohibitions, violation, penalty, intent	<p>(1) It shall be a violation of this part, and it shall be prohibited for any person: (a) To cause pollution, as defined in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.031.html"](7), except as otherwise provided in this part, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property. (b) To fail to obtain any permit required by this part or by rule or regulation adopted pursuant thereto, or to violate or fail to comply with any rule, regulation, order, or permit adopted or issued by a water management district, the department, or local government pursuant to their lawful authority under this part. (c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this part, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this part or by any permit, rule, regulation, or order issued under this part.</p> <p>(2) Whoever commits a violation specified in subsection (1) is liable for any damage caused and for civil penalties as provided in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.129.html"].</p>	

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				<p>(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree, punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](3)(e) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g), by a fine of not more than \$50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.</p> <p>(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](4)(b) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g), by a fine of not more than \$5,000 or 60 days in jail, or by both, for each offense.</p> <p>(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree, punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](4)(a) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g), by a fine of not more than \$10,000 or by 6 months in jail, or by both, for each offense.</p> <p>(6) It is the intent of the Legislature that the civil penalties imposed by the court be of such amount as to ensure immediate and continued compliance with this section.</p> <p>(7) All moneys recovered under the provisions of this section shall be allocated to the use of the water management district, the department, or the local government, whichever undertook and maintained the enforcement action. All monetary penalties and damages recovered by the department or the state under the provisions of this section shall be deposited into the Water Quality Assurance Trust Fund. All monetary penalties and damages recovered pursuant to this section by a water management district shall be retained and used exclusively within the territory of the water management district which collected the money. All monetary penalties and damages recovered pursuant to this subsection by a local government to which authority has been delegated pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.103.html"](8) shall be used to enhance surface water improvement or pollution control activities.</p>	
			379.3311, F.S. – Police powers of commission and its agents	<p>(1) The commission, the executive director and the executive director’s assistants designated by her or him, and each commission officer are constituted peace officers with the power to make arrests for violations of the laws of this state when committed in the presence of the officer or when committed on lands under the supervision and management of the commission, the department, the Board of Trustees of the Internal Improvement Trust Fund, or the Department of Agriculture and Consumer Services, including state parks, coastal and aquatic managed areas, and greenways and trails. The general laws applicable to arrests by peace officers of this state shall also be applicable to such director, assistants, and commission officers. Such persons may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry does not constitute a trespass.</p> <p>(2) Such officers may enforce throughout the state all laws relating to game, nongame birds, fish, and fur-bearing animals and all rules and regulations of the commission relating to wild animal life, marine life, and freshwater aquatic life, and in connection with such laws, rules, and regulations, in the enforcement thereof and in the performance of their duties thereunder, to: (a) Go upon all premises, posted or otherwise; (b) Execute warrants and search warrants for the violation of such laws; (c) Serve subpoenas issued for the examination, investigation, and trial of all offenses against such laws; (d) Carry firearms or other weapons, concealed or otherwise, in the performance of their duties; (e) Arrest upon probable cause without warrant any person found in the act of violating any such laws or, in pursuit immediately following such violations, to examine any person,</p>	

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				<i>boat, conveyance, vehicle, game bag, game coat, or other receptacle for wild animal life, marine life, or freshwater aquatic life, or any camp, tent, cabin, or roster, in the presence of any person stopping at or belonging to such camp, tent, cabin, or roster, when such officer has reason to believe, and has exhibited her or his authority and stated to the suspected person in charge the officer's reason for believing, that any of the aforesaid laws have been violated at such camp; (f) Secure and execute search warrants and in pursuance thereof to enter any building, enclosure, or car and to break open, when found necessary, any apartment, chest, locker, box, trunk, crate, basket, bag, package, or container and examine the contents thereof; (g) Seize and take possession of all wild animal life, marine life, or freshwater aquatic life taken or in possession or under control of, or shipped or about to be shipped by, any person at any time in any manner contrary to such laws.</i> <i>(3) It is unlawful for any person to resist an arrest authorized by this section or in any manner to interfere, either by abetting, assisting such resistance, or otherwise interfering with such executive director, assistants, or commission officers while engaged in the performance of the duties imposed upon them by law or regulation of the commission, the department, the Board of Trustees of the Internal Improvement Trust Fund, or the Department of Agriculture and Consumer Services.</i> <i>(4) Upon final disposition of any alleged offense for which a citation for any violation of this chapter or the rules of the commission has been issued, the court shall, within 10 days after the final disposition of the action, certify the disposition to the commission.</i>	
			379.3313, F.S. – Powers of commission law enforcement officers	<i>(1) Law enforcement officers of the commission are constituted law enforcement officers of this state with full power to investigate and arrest for any violation of the laws of this state and the rules of the commission, the department, the Board of Trustees of the Internal Improvement Trust Fund, and the Department of Agriculture and Consumer Services under their jurisdiction. The general laws applicable to arrests by peace officers of this state shall also be applicable to law enforcement officers of the commission. Such law enforcement officers may enter upon any land or waters of the state for performance of their lawful duties and may take with them any necessary equipment, and such entry will not constitute a trespass. It is lawful for any boat, motor vehicle, or aircraft owned or chartered by the commission or its agents or employees to land on and depart from any of the beaches or waters of the state. Such law enforcement officers have the authority, without warrant, to board, inspect, and search any boat, fishing appliance, storage or processing plant, fishhouse, spongehouse, oysterhouse, or other warehouse, building, or vehicle engaged in transporting or storing any fish or fishery products. Such authority to search and inspect without a search warrant is limited to those cases in which such law enforcement officers have reason to believe that fish or any saltwater products are taken or kept for sale, barter, transportation, or other purposes in violation of laws or rules adopted under this law. Such law enforcement officers may at any time seize or take possession of any saltwater products or contraband which have been unlawfully caught, taken, or processed or which are unlawfully possessed or transported in violation of any of the laws of this state or any rule of the commission. Such law enforcement officers may arrest any person in the act of violating this law, the rules of the commission, or any of the laws of this state. It is unlawful for a person to resist such arrest or in any manner interfere, either by abetting or assisting such resistance or otherwise interfering, with any such law enforcement officer while engaged in the performance of the duties imposed upon him or her by law or rule of the commission.</i> <i>(2) The Legislature finds that the checking and inspection of saltwater products aboard vessels is critical to good fishery management and conservation and that, because almost all saltwater products are either iced or cooled in closed areas or containers, the enforcement of seasons, size limits, and bag limits can only be effective when inspection of saltwater products so stored is immediate and routine. Therefore, in addition to the authority granted in subsection (1), a law enforcement officer of the commission who has probable cause to believe that the vessel has been used for fishing prior to the inspection shall have full authority to open and inspect all containers or areas where saltwater products are normally kept aboard vessels while such vessels are on the water, such as refrigerated or iced locations, coolers, fish boxes, and bait wells, but specifically excluding such containers that are located in sleeping or living areas of the vessel.</i>	
			403.061(8), F.S. – Department; powers and duties	<i>The department shall have the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it and, for this purpose, to: (8) Issue such orders as are necessary to effectuate the control of air and water pollution and enforce the same by all appropriate administrative and judicial proceedings.</i>	
			403.121, F.S.	Enforcement; procedure; remedies (see statute)	
			403.161, F.S. – Prohibitions, violation, penalty, intent	<i>(1) It shall be a violation of this chapter, and it shall be prohibited for any person: (a) To cause pollution, except as otherwise provided in this chapter, so as to harm or injure human health or welfare, animal, plant, or aquatic life or property. (b) To fail to obtain any permit required by this chapter or by rule or regulation, or to violate or fail to comply with any rule, regulation, order, permit, or certification adopted or issued by the department pursuant to its lawful authority. (c) To knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to</i>	

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				<p><i>be maintained under this chapter, or to falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter or by any permit, rule, regulation, or order issued under this chapter. (d) For any person who owns or operates a facility to fail to report to the representative of the department, as established by department rule, within one working day of discovery of a release of hazardous substances from the facility if the owner or operator is required to report the release to the United States Environmental Protection Agency in accordance with 42 U.S.C. s. 9603. (e) To fail to provide required notice pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.077.html"].</i></p> <p><i>(2) Whoever commits a violation specified in subsection (1) is liable to the state for any damage caused and for civil penalties as provided in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.141.html"].</i></p> <p><i>(3) Any person who willfully commits a violation specified in paragraph (1)(a) is guilty of a felony of the third degree punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](3)(e) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g) by a fine of not more than \$50,000 or by imprisonment for 5 years, or by both, for each offense. Each day during any portion of which such violation occurs constitutes a separate offense.</i></p> <p><i>(4) Any person who commits a violation specified in paragraph (1)(a) due to reckless indifference or gross careless disregard is guilty of a misdemeanor of the second degree, punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](4)(b) and [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g) by a fine of not more than \$5,000 or by 60 days in jail, or by both, for each offense.</i></p> <p><i>(5) Any person who willfully commits a violation specified in paragraph (1)(b) or paragraph (1)(c) is guilty of a misdemeanor of the first degree punishable as provided in ss. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.082.html"](4)(a) and[HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0700-0799/0775/Sections/0775.083.html"](1)(g) by a fine of not more than \$10,000 or by 6 months in jail, or by both for each offense.</i></p> <p><i>(6) It is the legislative intent that the civil penalties and criminal fines imposed by the court be of such amount as to ensure immediate and continued compliance with this section.</i></p>	
			403.412, F.S.	Environmental Protection Act (see statute)	

D. 40 C.F.R. Part 233, Subpart F – Federal Oversight

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 233.50	Director shall transmit a copy of the public notice, draft general permits, notice of significant action taken by the State agency, every issued permit, and Directors response to another State’s	373.4144(3), F.S. – Federal environmental permitting	<p><i>(3) The department may pursue a series of regional general permits for construction activities in wetlands or surface waters or delegation or assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.</i></p>	<p>The statute gives authority to pursue assumption, which includes entering into MOA’s, as necessary.</p> <p>The MOA required under 40 CFR 233.13 (Memorandum of Agreement with Regional Administrator) will cover the requirements of 233.50-233.52.</p>

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
		comments to the Regional Administrator. Unless waived, Administrator shall provide copy of each notice to Corps, FWS, and NMFS for comment. Objections by these agencies, and ultimately EPA, must be resolved before any permit is issued.			
	40 CFR 233.51	With several exceptions [†] , the Regional Administrator shall specify the categories of discharges for which the EPA will waive Federal Review of State permit applications. Administrator retains right to terminate any waiver.	373.4144(3), F.S. – Federal environmental permitting	<i>(3) The department may pursue a series of regional general permits for construction activities in wetlands or surface waters or delegation or assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.</i>	The statute gives authority to pursue assumption, which includes entering into MOA's, as necessary. The MOA required under 40 CFR 233.13 (Memorandum of Agreement with Regional Administrator) will cover the requirements of 233.50-233.52.
	40 CFR 233.52	The Director shall submit an annual report to the Administrator evaluating the States administration of its program and identifying problems and recommending solutions. After period of public comment, report will be finalized and publicly available.	373.4144(3), F.S. – Federal environmental permitting	<i>(3) The department may pursue a series of regional general permits for construction activities in wetlands or surface waters or delegation or assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.</i>	The statute gives authority to pursue assumption, which includes entering into MOA's, as necessary. The MOA required under 40 CFR 233.13 (Memorandum of Agreement with Regional Administrator) will cover the requirements of 233.50-233.52.

III. **404(b) (1) Guidelines - 40 C.F.R. Part 230:** States must have the authority to issue permits that assure compliance with the 404(b)(1) guidelines.

A. **40 C.F.R. Part 230, Subpart B - Compliance with the Guidelines**

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.10	No discharge permitted if (1) practical alternatives with less adverse impacts exist (2) causes or contributes to water quality degradation, (3) jeopardizes any listed species or results in adverse habitat modification, (4) appropriate and practicable steps to minimize adverse impacts have not been taken	Part IV of Chapter 373, F.S. 62-330.301(1)-(4), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	Management and Storage of Surface Waters (includes authority for ERP program; see statute) <i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (a) Will not cause adverse water quantity impacts to receiving waters and adjacent lands; (b) Will not cause adverse flooding to on-site or off-site property; (c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities; (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters; (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated; (f) Will not cause adverse secondary impacts to the water resources. In addition to the criteria in this subsection and in subsection 62-330.301(2), F.A.C., in accordance with Section 373.4132, F.S., an applicant proposing the construction, alteration, operation, maintenance, abandonment, or removal of a dry storage facility for 10 or more vessels that is functionally associated with a boat launching area must also provide reasonable assurance that the facility, taking into consideration any secondary impacts, will meet the</i>	Current conditions and additional conditions for issuance in 62-330.301 and .302, F.A.C., cover most of the analysis required in the 404(b)(1) guidelines. The state currently has no process for alternatives analysis under 230.10(a) or aesthetics review. The state will address alternatives analysis in rulemaking, under the review category “Elimination or Reduction of Impacts.”

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description	Comments on State authority
				<p>provisions of paragraph 62-330.302(1)(a), F.A.C., including the potential adverse impacts to manatees; (g) Will not adversely impact the maintenance of surface or ground water levels or surface water flows established pursuant to Section 373.042, F.S.; (h) Will not cause adverse impacts to a Work of the District established pursuant to Section 373.086, F.S.; (i) Will be capable, based on generally accepted engineering and scientific principles, of performing and functioning as proposed; (j) Will be conducted by a person with the financial, legal and administrative capability of ensuring that the activity will be undertaken in accordance with the terms and conditions of the permit, if issued; and, (k) Will comply with any applicable special basin or geographic area criteria established as follows: 1. Within the Northwest Florida Water Management District, Sections 13.0 through 13.4 (Special Basin Criteria for Sensitive Karst Areas, including Appendix A) of Volume II. 2. Within the Suwannee River Water Management District, Section 5.9 (Sensitive Karst Areas) of Volume II.</p> <p>3. Within the St. Johns River Water Management District: a. Chapter 40C-41, F.A.C., "Surface Water Management Basin Criteria," [October 1, 2013], incorporated by reference herein ([HYPERLINK "https://www.flrules.org/Gateway/reference.asp?No=Ref-02551"]). b. Sections 13.0 through 13.8.3 (Part VI, Basin Criteria), of Volume II. 4. Within the South Florida Water Management District: a. Chapter 40E-41, F.A.C., "Surface Water Management Basin and Related Criteria," (December 1, 2011), incorporated by reference herein ([HYPERLINK "https://www.flrules.org/Gateway/reference.asp?No=Ref-02554"]). b. Chapter 40E-62, F.A.C., "Works and Lands of the District Management Plans," (January 23, 1990), incorporated by reference herein ([HYPERLINK "https://www.flrules.org/Gateway/reference.asp?No=Ref-02556"]). c. Chapter 40E-63, F.A.C., "Everglades Program," (July 3, 2001), incorporated by reference herein ([HYPERLINK "https://www.flrules.org/Gateway/reference.asp?No=Ref-02557"]). d. For activities within the Outstanding Florida Waters of Monroe County, the provisions of Rules 62-312.400 through 62-312.460, F.A.C.</p> <p>Copies of incorporated material may be obtained from the Agency, as described in subsection 62-330.010(5), F.A.C.</p> <p>(2) In instances where an applicant is unable to meet state water quality standards because existing ambient water quality does not meet standards and the system will contribute to this existing condition, the applicant must implement mitigation measures that are proposed by or acceptable to the applicant that will cause net improvement of the water quality in the receiving waters for those parameters that do not meet standards.</p> <p>(3) In addition to the critiera in subsections 62-330.301(1) through (2), F.A.C., applications for a mitigation bank must also meet the criteria of Chapter 62-342, F.A.C.</p> <p>(4) The standards and criteria used to determine whether the reasonable assurances required in this section and Rule 62-330.302, F.A.C., have been provided, including the provisions for elimination or reduction of impacts and mitigation to offset adverse impacts, are contained in Volume I, incorporated by reference in subsection 62-330.010(4), F.A.C., and Volume II, incorporated by reference in subsection 62-330.010(4), F.A.C., for the applicable District.</p>	
			62-330.302, F.A.C. – Additional Conditions for Issuance of Individual and Conceptual Approval Permits	<p>(1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 1. Whether the activities will adversely affect the public health, safety, or welfare or the property of others, 2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats, 3. Whether the activities will adversely affect navigation or the flow of water or cause harmful erosion or shoaling, 4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity, 5. Whether the activities will be of a temporary or permanent nature, 6. Whether the activities will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and, 7. The current condition and relative value of functions being performed by areas affected by the proposed activities. (b) Will not cause unacceptable cumulative impacts upon wetlands and other surface waters as set forth in sections 10.2.8 through 10.2.8.2 of Volume I. (c) Located in, adjacent to or in close proximity to Class II waters or located in Class II waters or Class III waters classified by the Department of Agriculture and Consumer Services as approved, restricted, conditionally approved, or conditionally restricted for shellfish harvesting will comply with the additional criteria in section 10.2.5 of Volume I, as described in subsection 62-330.010(5), F.A.C. (d) Involving vertical seawalls in estuaries or lagoons will comply with the additional criteria provided in section 10.2.6 of Volume I.</p>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
				(2) When determining whether an applicant has provided reasonable assurances that the permitting standards of this chapter will be met, the Agency shall consider the applicant's violation of any rules adopted pursuant to Sections 403.91 through 403.929, F.S. (1984 Supp.), as amended, or Part IV, Chapter 373, F.S., and efforts taken by the applicant to resolve these violations.	
			AH I	Environmental Resource Permit Applicant's Handbook Volume I (General and Environmental) (see Applicant's Handbook)	
	404(b)(1) Guidelines	Authority for the 404(b)(1) guidelines; used to specify disposal sites; where 404(b)(1) guidelines would prohibit designation of site, also consider the economic impact of the site on navigation and anchorage.	373.414(1)(a)3., F.S. – Additional criteria for activities in surface waters and wetlands (public interest criteria)	<p>(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.031.html"](13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.421.html"](1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest. (a) In determining whether an activity, which is in, on, or over surface waters or wetlands, as delineated in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.421.html"](1), and is regulated under this part, is not contrary to the public interest or is clearly in the public interest, the governing board or the department shall consider and balance the following criteria: 3. Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling</p>	Positive (beneficial) impacts to navigation are generally considered to be in the public interest. Economic impact can be considered. Likewise, adverse impacts to navigation would be contrary to the public interest.
			AH I, section 10.2.3.3 – Navigation, Water Flow, Erosion and Shoaling	<p>In reviewing and balancing the criterion on navigation, erosion and shoaling in section 10.2.3(c), above, the Agency will evaluate whether the regulated activity located in, on or over wetlands or other surface waters will:</p> <p>(a) Significantly impede navigability or enhance navigability. The Agency will consider the current navigational uses of the surface waters and will not speculate on uses that may occur in the future. Applicants proposing to construct bridges or other traversing works must address adequate horizontal and vertical clearance for the type of watercraft currently navigating the surface waters. Applicants proposing to construct docks, piers and other works that extend into surface waters must address the continued navigability of these waters. An encroachment into a marked or customarily used navigation channel is an example of a significant impediment to navigability. Applicants proposing temporary activities in navigable surface waters, such as the mooring of construction barges, must address measures for clearly marking the work as a hazard to navigation, including nighttime lighting. The addition of navigational aids may be beneficial to navigation. If an applicant has a U.S. Coast Guard permit issued pursuant to 14 U.S.C. Section 81 (1993), 33 C.F.R. Section 62 (1993) for a regulated activity in, on or over wetlands or other surface waters, submittal of this permit with the application may assist the applicant in addressing this criterion.</p> <p>(b) Cause or alleviate harmful erosion or shoaling. Applicants proposing activities such as channel relocation, artificial reefs, construction of jetties, breakwaters, groins, bulkheads and beach nourishment must address existing and expected erosion or shoaling in the proposed design. Compliance with erosion control best management practices referenced in Part IV of this Volume, will be an important consideration in addressing this criterion. Each permit will have a general condition that requires applicants to utilize appropriate erosion control practices and to correct any adverse erosion or shoaling resulting from the regulated activities.</p> <p>(c) Significantly impact or enhance water flow. Applicants must address significant obstructions to sheet flow by assessing the need for structures that minimize the obstruction such as culverts or spreader swales in fill areas. Compliance with the water quantity criteria found in section 10.2.2.4, above, shall be an important consideration in addressing this criterion.</p>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	33 CFR 320.4(b)(4)	No permit shall be issued which alters wetlands identified as important unless the benefits of proposed alteration outweigh the damage to the wetland resource. Decide by applying 404(b)(1) guidelines, specifically 40 CFR 230.10(a)(1), (2) and (3) which address the analysis of practical alternatives.	N/A	N/A	No equivalent state authority for 230.10(a) – alternatives analysis. The state will address the alternatives analysis in rulemaking, under the review category “Elimination or Reduction of Impacts.”

B. 40 C.F.R. Part 230, Subpart C – Potential Impacts on Physical and Chemical Characteristics of the Aquatic Ecosystem

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.20	Potential impacts to aquatic ecosystem – substrate; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(d), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters</i>	We evaluate fill impacts to determine if they will adversely impact habitat, including substrate (benthic organisms, etc.) State law meets the federal requirement.
			AH I, section 10.2.2	Fish, Wildlife, Listed Species and their Habitats (see Applicant’s Handbook)	
	40 CFR 230.21	Potential impacts to aquatic ecosystem –suspended particulates/turbidity; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(e), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated</i>	We evaluate projects for the likelihood that turbidity or suspended particulate will occur. A General Condition of all individual permits requires use of turbidity and sedimentation control BMPs. Larger, in-water projects are required to perform turbidity monitoring during construction. State law meets the federal requirement.
			AH I, section 11.0	Erosion and Sediment Control (see Applicant’s Handbook)	
	40 CFR 230.22	Potential impacts to aquatic ecosystem –water chemistry, current patterns and water; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(e), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated</i>	We evaluate projects for likelihood to violate state water quality standards. Evaluation can include water quality, sediment, and effluent testing, if needed. Pollution prevention requirements are added as permit conditions, as needed. State law meets the federal requirement.
			AH I, section 10.2.4	Water Quality (see Applicant’s Handbook)	
	40 CFR 230.23-.24	Potential impacts to aquatic ecosystem –current patterns and water circulation and water fluctuations; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(a)-(c) and (e), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (a) Will not cause adverse water quantity impacts to receiving waters and adjacent lands; (b) Will not cause adverse flooding to on-site or off-site property; (c) Will not cause adverse impacts to existing surface water storage and conveyance capabilities; (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated</i>	We review projects for impacts to current patterns, circulation and water fluctuations. The state does this in many ways, and may require testing as needed. Certain project types, such as groins, jetties, large docking facilities, or any other project that is likely to significantly impact the flow of water trigger hydrographic testing requirements. State law meets the federal requirement.
			62-330.302(1)(a)3., F.A.C. – Additional Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 3. Whether the activities will adversely affect navigation or the flow of water or cause harmful erosion or shoaling</i>	
			AH I, section 10.2.2.4 – Water Quantity Impacts to Wetlands and Other Surface Waters	<i>Pursuant to section 10.1.1(a), above, an applicant must provide reasonable assurance that the regulated activity will not change the hydroperiod of a wetland or other surface water, so as to adversely affect wetland functions or other surface water functions as follows: (a) Whenever portions of a surface water management system, such as constructed basins, structures, stormwater ponds, canals, and ditches, could have the effect of reducing the depth, duration or frequency of inundation or saturation in a wetland or other surface water, the applicant must perform an analysis of the drawdown in water levels or diversion of water flows resulting from such activities and provide reasonable assurance that these drawdowns or diversions will not adversely impact the functions that wetlands and other surface waters provide to fish and wildlife and listed species; (b) Increasing the depth, duration, or frequency of inundation through changing the rate or method of discharge of water to wetlands or other surface waters or by impounding water in wetlands or other surface waters must also be addressed to prevent adverse effects to functions that wetlands and other surface waters provide to fish and wildlife and listed species. Different types of wetlands respond differently to increased depth, duration, or frequency of inundation. Therefore, the applicant must</i>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
				<p><i>provide reasonable assurance that activities that have the potential to increase discharge or water levels will not adversely affect the functioning of the specific wetland or other surface water subject to the increased discharge or water level; and</i></p> <p><i>(c) Whenever portions of an activity could have the effect of altering water levels in wetlands or other surface waters, applicants shall be required to either: monitor the wetland or other surface waters to demonstrate that such alteration has not resulted in adverse impacts; or modify the activity to prevent adverse impacts. Monitoring parameters, methods, schedules, and reporting requirements shall be specified in permit conditions.</i></p>	
			AH I, section 10.2.3.3 – Navigation, Water Flow, Erosion and Shoaling	<p><i>In reviewing and balancing the criterion on navigation, erosion and shoaling in section 10.2.3(c), above, the Agency will evaluate whether the regulated activity located in, on or over wetlands or other surface waters will:</i></p> <p><i>(a) Significantly impede navigability or enhance navigability. The Agency will consider the current navigational uses of the surface waters and will not speculate on uses that may occur in the future. Applicants proposing to construct bridges or other traversing works must address adequate horizontal and vertical clearance for the type of watercraft currently navigating the surface waters. Applicants proposing to construct docks, piers and other works that extend into surface waters must address the continued navigability of these waters. An encroachment into a marked or customarily used navigation channel is an example of a significant impediment to navigability. Applicants proposing temporary activities in navigable surface waters, such as the mooring of construction barges, must address measures for clearly marking the work as a hazard to navigation, including nighttime lighting. The addition of navigational aids may be beneficial to navigation. If an applicant has a U.S. Coast Guard permit issued pursuant to 14 U.S.C. Section 81 (1993), 33 C.F.R. Section 62 (1993) for a regulated activity in, on or over wetlands or other surface waters, submittal of this permit with the application may assist the applicant in addressing this criterion.</i></p> <p><i>(b) Cause or alleviate harmful erosion or shoaling. Applicants proposing activities such as channel relocation, artificial reefs, construction of jetties, breakwaters, groins, bulkheads and beach nourishment must address existing and expected erosion or shoaling in the proposed design. Compliance with erosion control best management practices referenced in Part IV of this Volume, will be an important consideration in addressing this criterion. Each permit will have a general condition that requires applicants to utilize appropriate erosion control practices and to correct any adverse erosion or shoaling resulting from the regulated activities.</i></p> <p><i>(c) Significantly impact or enhance water flow. Applicants must address significant obstructions to sheet flow by assessing the need for structures that minimize the obstruction such as culverts or spreader swales in fill areas. Compliance with the water quantity criteria found in section 10.2.2.4, above, shall be an important consideration in addressing this criterion.</i></p>	
			AH I, section 10.2.4	Water Quality (see Applicant's Handbook)	
	40 CFR 230.25	Potential impacts to aquatic ecosystem – salinity gradients; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(e), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated</i>	Potential impacts to salinity gradients are determined through water quality and hydrographic testing/modelling. State law meets the federal requirement.
			62-330.302(1)(a)2. and 4., F.A.C. – Additional Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats, 4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity</i>	
			AH I, section 10.2.3.4 – Fisheries, Recreation, Marine Productivity	<p><i>In reviewing and balancing the criterion regarding fishing or recreational values and marine productivity in section 10.2.3(d), above, the Agency will evaluate whether the regulated activity in, on, or over wetlands or other surface waters will cause:</i></p> <p><i>(a) Adverse effects to sport or commercial fisheries or marine productivity. Examples of activities that may adversely affect fisheries or marine productivity are the elimination or degradation of fish nursery habitat, change in ambient water temperature, change in normal salinity regime, reduction in detrital export, change in nutrient levels, or other adverse effects on populations of native aquatic organisms.</i></p>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
				<i>(b) Adverse effects or improvements to existing recreational uses of a wetland or other surface water. Wetlands and other surface waters may provide recreational uses such as boating, fishing, swimming, waterskiing, hunting, and birdwatching. An example of potential adverse effects to recreational uses is the construction of a traversing work, such as a road crossing a waterway, which could impact the current use of the waterway for boating.</i>	
			AH I, section 10.2.4	Water Quality (see Applicant’s Handbook)	

C. 40 C.F.R. Part 230, Subpart D – Potential Impacts on Biological Characteristics of the Aquatic System

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.30	Potential impacts to biology in aquatic ecosystem – harm to threatened and endangered species and habitat; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(d), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters</i>	<p>DEP, WMDs and delegated local governments send projects with wetland or surface water impacts to FWC for review. If FWC determines that listed species may be impacted, they provide suggestions for project revision to minimize or eliminate impact, and may provide conditions to be added to a permit. If FWC determines that a project will threaten the continued existence of a listed species, they can file a CZM objection to the project, in which case the permit would be denied.</p> <p>The agencies also send projects to the Department of Agriculture and Consumer Services (DACS) for review and comment if a project is in Class II (shellfish harvesting) waters. DACS may also provide comments, suggestions, or object to the project.</p> <p>All projects are reviewed to make sure they will meet state water quality standards, which are designed to maintain the integrity of the waterbodies for certain categories of use. These categories can be found in 62-302.400, F.A.C.</p> <p>Most waters in Florida are Class II or III: CLASS II: Shellfish Propagation or Harvesting CLASS III: Fish Consumption; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife</p> <p>State law meets the federal requirement.</p>
			62-330.302(1)(a)2., F.A.C. – Additional Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats</i>	
			AH I, section 2.0(a)36 – Definitions and Terms	<i>“Endangered or threatened species” means those animal species that are identified as federally-designated endangered and threatened species, state-designated threatened species, or marine endangered and threatened species listed in Rule 68A-27.003, F.A.C. (as amended September 19, 2012) or Rule 68A-27.0031, F.A.C. (as amended November 14, 2011), and those plant species listed in 50 Code of Federal Regulations section 17.12 (as amended October 1, 2007), when such plants are located in a wetland or other surface water.</i>	
			AH I, section 2.0(a)56 – Definitions and Terms	<i>“Listed Species” means those species that are endangered or threatened species (as defined in definition 2.0(a)36., above), or species of special concern (as defined in definition 2.0(a)94., below).</i>	
			AH I, section 10.2.2	Fish, Wildlife, Listed Species and their Habitats (see Applicant’s Handbook)	
			AH I, section 10.2.3.2 – Fish and Wildlife and their Habitats	<i>The Agency’s public interest review of that portion of a proposed activity in, on, or over wetlands and other surface waters for impacts to “the conservation of fish and wildlife, including endangered or threatened species, or their habitats” is encompassed within the required review of the entire activity under section 10.2.2, above. An applicant must always provide the reasonable assurances required under section 10.2.2, above.</i>	
	40 CFR 230.31	Potential impacts to biology in aquatic ecosystem – populations of fish, crustaceans, mollusks and other aquatic organisms in the food web; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(d) and (e), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters; (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated</i>	<p>(Same as 230.30, above) DEP, WMDs and delegated local governments send projects with wetland or surface water impacts to FWC for review. If FWC determines that listed species may be impacted, they provide suggestions for project revision to minimize or eliminate impact, and may provide conditions to be added to a permit. If FWC determines that a project will threaten the continued existence of a listed species, they can file a CZM objection to the project, in which case the permit would be denied.</p> <p>The agencies also send projects to the Department of Agriculture and Consumer Services (DACS) for</p>
			62-330.302(1)(a)1, 2, and 4., F.A.C. – Additional Conditions for Issuance of Individual and	<i>(1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 1.</i>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
			Conceptual Approval Permits	<i>Whether the activities will adversely affect the public health, safety, or welfare or the property of others, 2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats, 4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity</i>	review and comment if a project is in Class II (shellfish harvesting) waters. DACS may also provide comments, suggestions, or object to the project. All projects are reviewed to make sure they will meet state water quality standards, which are designed to maintain the integrity of the waterbodies for certain categories of use. These categories can be found in 62-302.400, F.A.C. Most waters in Florida are Class II or III: CLASS II: Shellfish Propagation or Harvesting CLASS III: Fish Consumption; Recreation, Propagation and Maintenance of a Healthy, Well-Balanced Population of Fish and Wildlife State law meets the federal requirement.
			AH I, section 10.2.3.1 – Public Health, Safety, or Welfare or the Property of Others	<i>In reviewing and balancing the criterion regarding public health, safety, welfare and the property of others in section 10.2.3(a), above, the Agency will evaluate whether the regulated activity located in, on, or over wetlands or other surface waters will cause: (a) An environmental hazard to public health or safety or improvement to public health or safety with respect to environmental issues. Each applicant must identify potential environmental public health or safety issues resulting from their project. Examples of these issues include: mosquito control; proper disposal of solid, hazardous, domestic or industrial waste; aids to navigation; hurricane preparedness or cleanup; environmental remediation, enhancement or restoration; and similar environmentally related issues. For example, the installation of navigational aids may improve public safety and may reduce impacts to public resources; (b) Impacts to areas classified by the Department of Agriculture and Consumer Services as approved, conditionally approved, restricted or conditionally restricted for shellfish harvesting. Activities that would cause closure or a more restrictive classification or management plan for a shellfish harvesting area would result in a negative factor in the public interest balance with respect to this criterion; (c) Flooding or alleviate existing flooding on the property of others. There is at least a neutral factor in the public interest balance with respect to the potential for causing or alleviating flooding problems if the applicant meets the water quantity criteria in Part III of Volume II; and (d) Environmental impacts to the property of others. For example, construction of a ditch that lowers the water table such that off-site wetlands or other surface waters would be partly or fully drained would be an environmental impact to the property of others. The Agency will not consider impacts to property values.</i>	
			AH I, section 10.2.3.4 – Fisheries, Recreation, Marine Productivity	<i>In reviewing and balancing the criterion regarding fishing or recreational values and marine productivity in section 10.2.3(d), above, the Agency will evaluate whether the regulated activity in, on, or over wetlands or other surface waters will cause: (a) Adverse effects to sport or commercial fisheries or marine productivity. Examples of activities that may adversely affect fisheries or marine productivity are the elimination or degradation of fish nursery habitat, change in ambient water temperature, change in normal salinity regime, reduction in detrital export, change in nutrient levels, or other adverse effects on populations of native aquatic organisms. (b) Adverse effects or improvements to existing recreational uses of a wetland or other surface water. Wetlands and other surface waters may provide recreational uses such as boating, fishing, swimming, waterskiing, hunting, and birdwatching. An example of potential adverse effects to recreational uses is the construction of a traversing work, such as a road crossing a waterway, which could impact the current use of the waterway for boating.</i>	
			AH I, section 10.2.5	Class II Waters, Waters Approved for Shellfish Harvesting (see Applicant’s Handbook)	
	40 CFR 230.32	Potential impacts to biology in aquatic ecosystem –loss or change of breeding or nesting areas, escape cover, travel corridors, and preferred food sources for resident and transient wildlife species; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(d), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters</i>	The state must review a project for impacts to all wildlife, not just listed species. The review is done using available scientific literature, and appropriate wildlife protection guidance documents, if available. State law meets the federal requirement.
			62-330.302(1)(a)2., F.A.C. – Additional Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats</i>	
			AH I, section 10.2.2	Fish, Wildlife, Listed Species and their Habitats (see Applicant’s Handbook)	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
			AH I, section 10.2.3.2 – Fish and Wildlife and their Habitats	<i>The Agency’s public interest review of that portion of a proposed activity in, on, or over wetlands and other surface waters for impacts to “the conservation of fish and wildlife, including endangered or threatened species, or their habitats” is encompassed within the required review of the entire activity under section 10.2.2, above. An applicant must always provide the reasonable assurances required under section 10.2.2, above.</i>	

D. 40 C.F.R. Part 233, Subpart E – Potential Impacts on Special Aquatic Sites

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.40	Potential impacts to Special Aquatic Sites – sanctuaries and refuges; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	Chapter 258, F.S.	State Parks and Preserves (see statute)	<p>The state has many ways to protect sanctuaries and refuges. In addition to rules to protect Aquatic Preserves and Outstanding Florida waters, special criteria for review of sensitive areas can be found in our Sovereignty Submerged Lands Management rules and ERP rules. Any project within an Aquatic Preserve or special managed area must be consistent with any existing management plan. Our Coastal Zone Management commenting agencies and Aquatic Preserve staff also assist with these protections by providing comments and conditions to add to ERP permits.</p> <p>To receive an ERP permit, an applicant has to have sufficient real property interest. This means that any activities within a park or preserve are applied for by park or preserve staff in accordance with any management plans or objectives, or are endorsed by the park through the park being a co-applicant on a permit application.</p> <p>ERP staff also evaluate each project for potential impact to the property of others. This includes any adverse environmental impact or flooding.</p> <p>State law meets the federal requirement.</p>
			Chapter 18-20, F.A.C.	Florida Aquatic Preserves (includes special protection criteria for waters designated as Aquatic Preserves; see rule)	
			Chapter 18-21, F.A.C.	Sovereignty Submerged Lands Management (includes Florida Keys marina and dock siting policies and criteria; see rule)	
			Chapter 62-312, F.A.C.	Dredge and Fill Activities within Monroe County Outstanding Florida Waters (see rule)	
			Chapter 62-330, F.A.C.	Environmental Resource Permitting (see rule)	
			AH I	Environmental Resource Permit Applicant’s Handbook Volume I (General and Environmental) (see Applicant’s Handbook)	
	40 CFR 230.41 – 230.45	Potential impacts to Special Aquatic Sites – wetlands, mud flats, vegetated shallows, coral reefs, and riffle or pool complexes; used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	Part IV of Chapter 373, F.S.	The state ERP program under Part IV of Chapter 373 and 62-330, F.A.C., regulates activities, including dredge and fill activities, in wetlands and other surface waters.	<p>All of these types of sites, delineated as wetlands or other surface waters under 62-340, F.A.C. are regulated under the ERP program. Special consideration is given to sites that are rare, or that have exceptional wetland functional value.</p> <p>Many General Permits are excluded from use, or contain special protections for areas that contain submerged or emergent aquatic vegetation, corals, or hard-bottom habitat. For individual permits, these types of habitats are considered to provide highly valuable functions and are regulated accordingly.</p> <p>It should be noted that most mud flats, vegetated shallows, and riffle and pool complexes are within Section 10 waters that are not assumable by a state 404 program.</p> <p>The state has a special statute for assessing civil penalties for destruction of coral – 403.93345, F.S.</p> <p>State law meets the federal requirement.</p>
			Chapter 62-330, F.A.C. – Environmental Resource Permitting	The state ERP program under Part IV of Chapter 373 and 62-330, F.A.C., regulates activities, including dredge and fill activities, in wetlands and other surface waters.	
			Chapter 62-340, F.A.C.	Delineation of the Landward Extent of Wetlands and Surface Waters (see rule)	
			AH I, section 10.2.2.3 – Fish, Wildlife, Listed Species and their Habitats	<i>The assessment of impacts expected as a result of proposed activities on the values of functions will be based on a review of scientific literature, ecologic and hydrologic information, and field inspection. When assessing the value of functions that any wetland or other surface water provides to fish, wildlife, and listed species, the factors that the Agency will consider are:</i> <i>(a) Condition – this factor addresses whether the wetland or other surface water is in a high quality state or has been the subject of past alterations in hydrology, water quality, or vegetative composition. However, areas impacted by activities in violation of an Agency rule, order, or permit adopted or issued pursuant to Chapter 373, F.S., or Part VIII of Chapter 403, F.S. (1984 Supp.) as amended, will be evaluated as if the activity had not occurred;</i> <i>(b) Hydrologic connection – this factor addresses the nature and degree of off-site connection, which may provide benefits to off-site water resources through detrital export, base flow maintenance, water quality enhancement or the provision of nursery habitat;</i>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
				(c) Uniqueness – this factor addresses the relative rarity of the wetland or other surface water and its floral and faunal components in relation to the surrounding regional landscape; (d) Location – this factor addresses the location of the wetland or other surface water in relation to its surroundings. In making this assessment, the Agency will consult reference materials such as the Florida Natural Areas Inventory, Comprehensive Plans, and maps created by governmental agencies identifying land with high ecological values; and (e) Fish and wildlife utilization – this factor addresses use of the wetland or other surface water for resting, feeding, breeding, nesting or denning by fish and wildlife, particularly those that are listed species.	

E. 40 C.F.R. Part 233, Subpart F – Potential Effects on Human Use Characteristics

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.50-230.54	List of potential impacts to human use characteristics including municipal and private water supplies, recreational and commercial fisheries, water-related recreation, aesthetics, and parks, monuments and preserves; list is used in determining compliance with 404(b)(1) under 40 CFR 230, Subpart B.	62-330.301(1)(e), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits 62-330.302(1)(a), F.A.C. – Additional Conditions for Issuance of Individual and Conceptual Approval Permits (public interest criteria) AH I, section 10.2.3	(1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated (1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 1. Whether the activities will adversely affect the public health, safety, or welfare or the property of others, 2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats, 3. Whether the activities will adversely affect navigation or the flow of water or cause harmful erosion or shoaling, 4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity, 5. Whether the activities will be of a temporary or permanent nature, 6. Whether the activities will adversely affect or will enhance significant historical and archaeological resources under the provisions of Section 267.061, F.S.; and, 7. The current condition and relative value of functions being performed by areas affected by the proposed activities. Public Interest Test (see Applicant’s Handbook)	State statutes and rules cover the categories listed in 230.50-.54, except for aesthetics review. Per previous discussion with EPA, there appears to be no guidance for conducting an aesthetics review. Comment for aesthetics review: Prevention of inappropriate or incompatible development is typically under the jurisdiction of the local government planning and zoning department. This is addressed by the local government building permit. The state is currently prohibited by statute from requiring applicants to receive their local government permit as a completeness item to receive a state permit, unless specifically allowed in statute. State law appears to meet the federal requirement.

F. 40 C.F.R. Part 233, Subpart G – Evaluation and Testing

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.60-230.61	Provides information to reach determinations required by 230.11	62-4.246(1)-(3), F.A.C. – Sampling, Testing Methods, and Method Detection Limits for Water Pollution Sources 62-330.301(1)(d), (e), and (f), and (2), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	(1) The Department shall require monitoring and sampling for pollutants reasonably expected to be contained in the discharge and to violate the water quality criteria in Chapter 62-302, F.A.C. (2) Field testing, sample collection and preservation, laboratory testing, including quality control procedures, and all record keeping shall comply with Chapter 62-160, F.A.C. (3) Subsections (4)-(11) of this rule apply only to permit applications, permits, monitoring reports, and other sources of data relating to discharges to surface waters. (1) To obtain an individual or conceptual approval permit, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, removal, or abandonment of the projects regulated under this chapter: (d) Will not adversely impact the value of functions provided to fish and wildlife and listed species by wetlands and other surface waters; (e) Will not adversely affect the quality of receiving waters such that the state water quality standards set forth in Chapters 62-4, 62-302, 62-520, and 62-550, F.A.C., including the antidegradation provisions of paragraphs 62-4.242(1)(a) and (b), F.A.C., subsections 62-4.242(2) and (3), F.A.C., and Rule 62-302.300, F.A.C., and any special standards for Outstanding	The authority to require water quality and sediment testing is in the rules listed. The state implements a review process very similar to the process described in the guidelines. Contamination thresholds are addressed in our state water quality standards. When testing is required, applicants must test for specific parameters determined by the agency to be appropriate for the project and location, and labs are required to follow certain approved testing procedures, and to report the data in a specified, useable format. Processors then compare the data to the applicable standards as listed

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description	Comments on State authority
				<i>Florida Waters and Outstanding National Resource Waters set forth in subsections 62-4.242(2) and (3), F.A.C., will be violated; (f) Will not cause adverse secondary impacts to the water resources. In addition to the criteria in this subsection and in subsection 62-330.301(2), F.A.C., in accordance with Section 373.4132, F.S., an applicant proposing the construction, alteration, operation, maintenance, abandonment, or removal of a dry storage facility for 10 or more vessels that is functionally associated with a boat launching area must also provide reasonable assurance that the facility, taking into consideration any secondary impacts, will meet the provisions of paragraph 62-330.302(1)(a), F.A.C., including the potential adverse impacts to manatees</i> <i>(2) In instances where an applicant is unable to meet state water quality standards because existing ambient water quality does not meet standards and the system will contribute to this existing condition, the applicant must implement mitigation measures that are proposed by or acceptable to the applicant that will cause net improvement of the water quality in the receiving waters for those parameters that do not meet standards.</i>	in 62-330.301(1)(e), F.A.C. for water quality, sediments, or groundwater. If testing indicates, elutriate testing will also be required. The testing requirements are tailored to the project and the final disposal site, similar to the guidance in 40 CFR 230.60 and .61. The state agencies have an internal Operations and Procedures Manual (OPM) to direct staff when determining when and what type of testing is necessary. State law meets the federal requirement.
			62-330.302(1)(a)1, 2, 4, and (c), F.A.C. – Additional Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(1) In addition to the conditions in Rule 62-330.301, F.A.C., to obtain an individual or conceptual approval permit under this chapter, an applicant must provide reasonable assurance that the construction, alteration, operation, maintenance, repair, removal, and abandonment of a project: (a) Located in, on, or over wetlands or other surface waters will not be contrary to the public interest, or if such activities significantly degrade or are within an Outstanding Florida Water, are clearly in the public interest, as determined by balancing the following criteria as set forth in sections 10.2.3 through 10.2.3.7 of Volume I: 1. Whether the activities will adversely affect the public health, safety, or welfare or the property of others, 2. Whether the activities will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats, 4. Whether the activities will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity</i> <i>(c) Located in, adjacent to or in close proximity to Class II waters or located in Class II waters or Class III waters classified by the Department of Agriculture and Consumer Services as approved, restricted, conditionally approved, or conditionally restricted for shellfish harvesting will comply with the additional criteria in section 10.2.5 of Volume I, as described in subsection 62-330.010(5), F.A.C.</i>	
			AH I, section 10.2.4	Water Quality (see Applicant’s Handbook)	

G. 40 C.F.R. Part 233, Subpart H – Actions to Minimize Adverse Effects

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description	Comments on State authority
	40 CFR 230.70-230.77	Provides list of actions which can be undertaken to minimize the adverse effects of discharges of dredged or fill material	62-330.301(4), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(4) The standards and criteria used to determine whether the reasonable assurances required in this section and Rule 62-330.302, F.A.C., have been provided, including the provisions for elimination or reduction of impacts and mitigation to offset adverse impacts, are contained in Volume I, incorporated by reference in subsection 62-330.010(4), F.A.C., and Volume II, incorporated by reference in subsection 62-330.010(4), F.A.C., for the applicable District.</i>	State rule allows all factors listed in 230.70-77 to be considered as “practicable design modifications” to eliminate or reduce wetland impact. In practice, all the items on the list, as appropriate for each project, are considered. State rule has “out” provisions, where certain projects may not be required to demonstrate elimination or reduction of impacts. Rulemaking or a statutory change will be done so these provisions will not apply when a project requires a state 404 permit.
			AH I, section 5.5.4.1 – Staff Evaluation and Agency Action	<i>Agency staff will commence the technical review when the application for an individual permit is complete. Criteria used in the evaluation will include Rules 62-330.075 (if the activity is located on state-owned submerged lands), 62-330.301 and 62-330.302, F.A.C., Parts II through V of this Volume, and Volume II, as applicable. The decision to issue or deny a permit will be based on a determination of whether the reasonable assurances required in the above rules and the Handbook have been provided, including the provisions for elimination or reduction of adverse impacts to wetlands and other surface waters, and a determination of whether mitigation is appropriate to offset those adverse impacts.</i>	
			AH I, section 10.2.1 – Elimination or Reduction of Impacts	<i>Protection of wetlands and other surface waters is preferred to destruction and mitigation due to the temporal loss of ecological value and uncertainty regarding the ability to recreate certain functions associated with these features. The following factors are considered in determining whether an application will be approved by the Agency: the degree of impact to wetland and other surface water functions caused by a proposed activity; whether the impact to these functions can be mitigated; and the practicability of design modifications for the site that could eliminate or reduce impacts to these functions, including alignment alternatives for a proposed linear system. Design modifications to reduce or eliminate adverse impacts must be explored, as described in section 10.2.1.1, below. Adverse impacts remaining after practicable design modifications have been made may be offset by mitigation as described in sections 10.3 through 10.3.8, below. An applicant may propose</i>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
				<p>mitigation, or the Agency may suggest mitigation, to offset the adverse impacts caused by regulated activities as identified in sections 10.2 through 10.2.8.2, below. To receive Agency approval, an activity cannot cause a net adverse impact on wetland functions and other surface water functions that is not offset by mitigation.</p> <p>10.2.1.1 Except as provided in section 10.2.1.2, below, if the proposed activity will result in adverse impacts to wetland functions and other surface water functions such that it does not meet the requirements of sections 10.2.2 through 10.2.3.7, below, then the Agency in determining whether to grant or deny a permit shall consider whether the applicant has implemented practicable design modifications to reduce or eliminate such adverse impacts.</p> <p>The term “modification” shall not be construed as including the alternative of not implementing the activity in some form, nor shall it be construed as requiring a project that is significantly different in type or function. A proposed modification that is not technically capable of being completed, is not economically viable, or that adversely affects public safety through the endangerment of lives or property is not considered “practicable.” A proposed modification need not remove all economic value of the property in order to be considered not “practicable.” Conversely, a modification need not provide the highest and best use of the property to be “practicable.” In determining whether a proposed modification is practicable, consideration shall also be given to the cost of the modification compared to the environmental benefit it achieves.</p> <p>10.2.1.2 The Agency will not require the applicant to implement practicable design modifications to reduce or eliminate impacts when: a. The ecological value of the functions provided by the area of wetland or other surface water to be adversely affected is low, based on a site specific analysis using the factors in section 10.2.2.3, below, and the proposed mitigation will provide greater long term ecological value than the area of wetland or other surface water to be adversely affected, or b. The applicant proposes mitigation that implements all or part of a plan that provides regional ecological value and that provides greater long term ecological value than the area of wetland or other surface water to be adversely affected.</p> <p>10.2.1.3 Should such mutual consideration of modification and mitigation not result in a permissible activity, the Agency must deny the application. Nothing herein shall imply that the Agency may not deny an application for a permit as submitted or modified, if it fails to meet the conditions for issuance, or that mitigation must be accepted by the Agency.</p>	

H. 40 C.F.R. Part 233, Subpart I – Planning to Shorten Permit Processing Time

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	40 CFR 230.80	In order to streamline permit process times, EPA may identify possible future disposal sites and areas unsuitable for disposal site specification.	373.4131, F.S. 373.4144, F.S. – Federal environmental permitting	<p>Statewide environmental resource permitting rules (see statute)</p> <p><i>(1) It is the intent of the Legislature to: (a) Facilitate coordination and a more efficient process of implementing regulatory duties and functions between the Department of Environmental Protection, the water management districts, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, the United States Environmental Protection Agency, the Fish and Wildlife Conservation Commission, and other relevant federal and state agencies. (b) Authorize the Department of Environmental Protection to obtain issuance by the United States Army Corps of Engineers, pursuant to state and federal law and as set forth in this section, of an expanded state programmatic general permit, or a series of regional general permits, for categories of activities in waters of the United States governed by the Clean Water Act and in navigable waters under the Rivers and Harbors Act of 1899 which are similar in nature, which will cause only minimal adverse environmental effects when performed separately, and which will have only minimal cumulative adverse effects on the environment. (c) Use the mechanism of such a state general permit or such regional general permits to eliminate overlapping federal regulations and state rules that seek to protect the same resource and to avoid duplication of permitting between the United States Army Corps of Engineers and the department for minor work located in waters of the United States, including navigable waters, thus eliminating, in appropriate cases, the need for a separate individual approval from the United States Army Corps of Engineers while ensuring the most stringent protection of wetland resources. (d) Direct the department not to seek issuance of or take any action pursuant to any such permit or permits unless such conditions are at least as protective of the environment and natural resources as existing state law under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899.</i></p> <p><i>(2)(a) In order to effectuate efficient wetland permitting and avoid duplication, the department and water management districts are authorized to implement a voluntary state programmatic general permit for all dredge and fill activities impacting 10 acres or less of wetlands or other surface waters, including navigable waters, subject to agreement with the United States Army Corps of Engineers, if the general permit is at least as protective of the environment and natural resources as existing state law</i></p>	<p>The state is already implementing such streamlining in the following ways:</p> <p>1) Conceptual approval permits for urban infill or redevelopment, to streamline redevelopment efforts.</p> <p>2) Conceptual approval permits – these can be issued to property owners as a pre-evaluation/approval of a large project, designating where fill can be permitted, etc. This gives applicants a higher level of certainty that future phases of a project are permissible, and gives the agency a better idea of the future impacts to be expected in large development tracts.</p> <p>3) Entering Programmatic General Permits with the Corps (see Jacksonville District Regulatory Sourcebook for examples).</p> <p>Conceptual approval permits are not construction permits. Individual ERP permits must be received by the applicant before any construction activity occurs.</p> <p>State law meets the federal requirement.</p>

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
				<p><i>under this part and federal law under the Clean Water Act and the Rivers and Harbors Act of 1899. (b) By seeking to use a statewide programmatic general permit, an applicant consents to applicable federal wetland jurisdiction criteria, which are not included pursuant to this part, but which are authorized by the regulations implementing s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899 as required by the United States Army Corps of Engineers, notwithstanding s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.4145.html"] and for the limited purpose of implementing the state programmatic general permit authorized by this subsection.</i></p> <p><i>(3) The department may pursue a series of regional general permits for construction activities in wetlands or surface waters or delegation or assumption of federal permitting programs regulating the discharge of dredged or fill material pursuant to s. 404 of the Clean Water Act, Pub. L. No. 92-500, as amended, 33 U.S.C. ss. 1251 et seq., and s. 10 of the Rivers and Harbors Act of 1899.</i></p>	
			62-330.055, F.A.C.	Conceptual Approval Permits for Urban Infill or Redevelopment (see rule)	
			62-330.056, F.A.C.	Other Conceptual Approval Permits (see rule)	
		62-330.450, F.A.C. – General Permit for Construction, Alteration, and Operation of Urban Infill and Redevelopment Activities in Conformance with the Conceptual Approval Permit in Rule 62-330.055, F.A.C.		<p><i>A general permit is issued that authorizes construction, alteration, operation, and maintenance of urban infill and redevelopment projects contemplated by a conceptual approval permit issued under Rule 62-330.055, F.A.C., provided all the following conditions are met:</i></p> <p><i>(1) The activities must be within a community redevelopment area or an urban infill and redevelopment area designated under Chapter 163, F.S., that is the subject of a conceptual approval permit issued under Rule 62-330.055, F.A.C.</i></p> <p><i>(2) The notice of intent to use this general permit must include one set of construction plans and calculations prepared by a registered professional that: (a) Depict all stormwater management features, all existing and proposed impervious areas, all existing and proposed pervious areas, and the land uses within the site of the proposed activities. (b) Demonstrate a reduction of loading of pollutants, as identified in the conceptual approval permit, under the existing and proposed conditions at the site of the proposed activities. (c) Constitute a design consistent with the terms and conditions of the conceptual approval permit, including an identification of the owner and operator of the stormwater management systems, and a demonstration of acceptance of such responsibility by that owner or operator. (d) Identify the specific location within the urban infill and redevelopment area where activities are proposed, including any areas within or connected to the development area that have been or will be set-aside for preservation, or where construction otherwise is not to occur.</i></p> <p><i>(3) The Agency shall have 30 days upon receipt of the notice to respond as to whether the plans and calculations are in substantial compliance with the conceptual approval permit. If they are, construction of that portion of the site addressed by those plans may commence. If the Agency determines that the plans and calculations are not in substantial compliance with the conceptual approval permit, the Agency shall, within 30 days of receipt of the notice, inform the applicant of the inconsistencies, the measures needed to address those inconsistencies, and that verification of qualification to use the general permit is denied without prejudice. The applicant may resubmit a notice to use this general permit once those inconsistencies have been addressed. Construction of the projects that are the subject of the original notice shall not commence until the permittee has resubmitted a revised notice and obtained verification that the activities qualify for the general permit.</i></p> <p><i>(4) Construction must be performed in compliance with the terms and conditions of the conceptual approval permit.</i></p> <p><i>(5) As part of reviewing the qualification to use this general permit, the Agency will verify the number of debits that must be made to the ledger of target pollutant loads (mass per acre) if the activities included in the notice are constructed, and will debit that amount from the master ledger approved in the conceptual approval permit.</i></p> <p><i>(6) Within 30 days of completion of construction, the registered professional shall submit certification that construction was completed in substantial conformance with the plans and calculations that were submitted in the verified qualification to use this general permit.</i></p> <p><i>(7) This general permit authorizes construction of the above authorized projects within a duration of five years from verification of qualification; operation and maintenance of the authorized system shall be the responsibility of the owner and operator for the life of the project or activity.</i></p>	
			AH I, section 3.4	Conceptual Approval Permits (see Applicant's Handbook)	

I. 40 C.F.R. Part 233, Subpart J – Compensatory Mitigation for Losses of Aquatic Resources

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description	Comments on State authority
	40 CFR 230.91	Purpose of Subpart J is to establish criteria for compensatory mitigation to offset unavoidable impacts to waters of the US.	373.414(1)(b), F.A.C. – Additional criteria for activities in surface waters and wetlands	<p>(1) As part of an applicant's demonstration that an activity regulated under this part will not be harmful to the water resources or will not be inconsistent with the overall objectives of the district, the governing board or the department shall require the applicant to provide reasonable assurance that state water quality standards applicable to waters as defined in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0403/Sections/0403.031.html"](13) will not be violated and reasonable assurance that such activity in, on, or over surface waters or wetlands, as delineated in s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.421.html"](1), is not contrary to the public interest. However, if such an activity significantly degrades or is within an Outstanding Florida Water, as provided by department rule, the applicant must provide reasonable assurance that the proposed activity will be clearly in the public interest. (b) If the applicant is unable to otherwise meet the criteria set forth in this subsection, the governing board or the department, in deciding to grant or deny a permit, shall consider measures proposed by or acceptable to the applicant to mitigate adverse effects that may be caused by the regulated activity. Such measures may include, but are not limited to, onsite mitigation, offsite mitigation, offsite regional mitigation, and the purchase of mitigation credits from mitigation banks permitted under s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.4136.html"] . It shall be the responsibility of the applicant to choose the form of mitigation. The mitigation must offset the adverse effects caused by the regulated activity.</p> <p>1. The department or water management districts may accept the donation of money as mitigation only where the donation is specified for use in a duly noticed environmental creation, preservation, enhancement, or restoration project, endorsed by the department or the governing board of the water management district, which offsets the impacts of the activity permitted under this part. However, the provisions of this subsection shall not apply to projects undertaken pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.4137.html"] or chapter 378. Where a permit is required under this part to implement any project endorsed by the department or a water management district, all necessary permits must have been issued prior to the acceptance of any cash donation. After the effective date of this act, when money is donated to either the department or a water management district to offset impacts authorized by a permit under this part, the department or the water management district shall accept only a donation that represents the full cost to the department or water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land management, and general overhead consisting of costs such as staff time, building, and vehicles. The department or the water management district may use a multiplier or percentage to add to other direct or indirect costs to estimate general overhead. Mitigation credit for such a donation shall be given only to the extent that the donation covers the full cost to the agency of undertaking the project that is intended to mitigate the adverse impacts. However, nothing herein shall be construed to prevent the department or a water management district from accepting a donation representing a portion of a larger project, provided that the donation covers the full cost of that portion and mitigation credit is given only for that portion. The department or water management district may deviate from the full cost requirements of this subparagraph to resolve a proceeding brought pursuant to chapter 70 or a claim for inverse condemnation. Nothing in this section shall be construed to require the owner of a private mitigation bank, permitted under s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.4136.html"] , to include the full cost of a mitigation credit in the price of the credit to a purchaser of said credit.</p> <p>2. The department and each water management district shall report by March 1 of each year, as part of the consolidated annual report required by s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.036.html"](7), all cash donations accepted under subparagraph 1. during the preceding water</p>	<p>The state considers "appropriateness" when assessing mitigation proposals. An appropriate mitigation project is one that fully offsets loss of specific wetland functions. A provision in 62-345.600 provides that time lag (aka temporal loss) shall not be considered for certain mining mitigation/reclamation projects.</p> <p>The state will include, through rulemaking, appropriate provisions of the 404(b)(1) guidelines for assessment of mitigation for mining projects, mitigation hierarchy, and establishment of a mitigation bank.</p>

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description	Comments on State authority
				<p>management district fiscal year for wetland mitigation purposes. The report shall exclude those contributions pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.4137.html"]. The report shall include a description of the endorsed mitigation projects and, except for projects governed by s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0300-0399/0373/Sections/0373.4135.html"](6), shall address, as applicable, success criteria, project implementation status and timeframe, monitoring, long-term management, provisions for preservation, and full cost accounting.</p> <p>3. If the applicant is unable to meet water quality standards because existing ambient water quality does not meet standards, the governing board or the department shall consider mitigation measures proposed by or acceptable to the applicant that cause net improvement of the water quality in the receiving body of water for those parameters which do not meet standards.</p> <p>4. If mitigation requirements imposed by a local government for surface water and wetland impacts of an activity regulated under this part cannot be reconciled with mitigation requirements approved under a permit for the same activity issued under this part, including application of the uniform wetland mitigation assessment method adopted pursuant to subsection (18), the mitigation requirements for surface water and wetland impacts shall be controlled by the permit issued under this part.</p>	
			373.414(6)(b), F.S. – Additional criteria for activities in surface waters and wetlands (phosphate or heavy mineral reclamation = mitigation)	(b) Wetlands reclamation activities for phosphate and heavy minerals mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities.	
			373.414(6)(c), F.S. – Additional criteria for activities in surface waters and wetlands (fullers earth reclamation/mitigation)	(c) Wetlands reclamation activities for fuller's earth mining undertaken pursuant to chapter 378 shall be considered appropriate mitigation for this part if they maintain or improve the water quality and the function of the biological systems present at the site prior to the commencement of mining activities, unless the site features make such reclamation impracticable, in which case the reclamation must offset the regulated activities' adverse impacts on surface waters and wetlands.	
			373.414(6)(d), F.S. – Additional criteria for activities in surface waters and wetlands (limerock and sand mining)	<p>(d) Onsite reclamation of the mine pit for limerock and sand mining shall be conducted in accordance with the requirements of chapter 378.</p> <p>1. Mitigation activities for limerock and sand mining must offset the regulated activities' adverse impacts on surface waters and wetlands. Mitigation activities shall be located on site, unless onsite mitigation activities are not feasible, in which case, offsite mitigation as close to the activities as possible shall be required. However, mitigation banking may be an acceptable form of mitigation, whether on or off site, as judged on a case-by-case basis.</p> <p>2. The ratio of mitigation-to-wetlands loss shall be determined on a case-by-case basis and shall be based on the quality of the wetland to be impacted and the type of mitigation proposed.</p>	
			373.414(6)(e), F.S. – Additional criteria for activities in surface waters and wetlands (peat mining)	<p>(e) The Legislature recognizes that the state's horticultural industry contributes to the economic strength of Florida and that high-quality peat is a limited resource that is an important component of horticultural production. The Legislature further recognizes that obtaining high-quality peat typically and uniquely requires the mining of wetlands and other surface waters and that the use of recycled and renewable material to replace or reduce the use of natural peat is necessary for the future of the horticultural industry.</p> <p>1. As used in this paragraph, the term: a. "High-quality peat" means peat from a freshwater herbaceous wetland that grades to on the Post Scale and has a pH less than 7. b. "Horticultural industry" means the industry that cultivates plants, including, but not limited to, trees, shrubs, flowers, annuals, perennials, tropical foliage, liners, ferns, vines, bulbs, grafts, scions, or buds, but excludes turf grasses grown or kept for or capable of propagation or distribution for retail, wholesale, or rewholesale purposes.</p> <p>2. The department shall develop rules for permitting and mitigation of peat mines in herbaceous or historically herbaceous wetlands where high-quality peat is extracted predominately for use in the horticultural industry provided: a. The permitting and mitigation rules shall be applicable where no less than 80 percent of the extracted peat is high-quality peat and 80 percent</p>	

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
				<p><i>of the high-quality peat is used by the horticultural industry in products that incorporate other renewable or recycled materials to replace or reduce the use of natural peat; b. No extraction is occurring in the underlying sand or rock strata; c. No portion of the extraction or mitigation area is part of an existing or proposed larger plan of development; and d. No portion of the mine is located in a body of water designated as Outstanding Florida Waters.</i></p> <p><i>3. In adopting rules as directed in subparagraph 2., design modifications shall not be required to reduce or eliminate adverse impacts to herbaceous wetlands that score below a specific value, as provided by rule using the uniform mitigation assessment method of evaluation, except to require that the project meet water quality standards, not cause adverse offsite flooding, not adversely impact significant historical and resources pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0200-0299/0267/Sections/0267.061.html"], and not cause adverse impacts to listed species or their habitats. In assessing mitigation for mines that are not required to reduce or eliminate adverse impacts, retaining a percentage of the reclaimed wetland as open water shall be deemed appropriate wetland mitigation. The rules must establish the amount of open water allowable as mitigation based upon a consideration of the type and amount of other wetland mitigation proposed, the value of those wetlands as evaluated using the uniform mitigation assessment method, and the amount of preservation of wetlands. The amount of open water shall not exceed 60 percent of the premining wetlands within the extracted area.</i></p> <p><i>4. Rule 62-345.600, Florida Administrative Code, shall not be applied to mitigation for mines qualifying under this paragraph.</i></p> <p><i>5. The department shall initiate rulemaking within 90 days after July 1, 2007, and water management districts may implement the proposed rules without adoption pursuant to s. [HYPERLINK "http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.54.html"].</i></p>	
			Chapter 378, F.S. – Land Reclamation	Pursuant to mining statutes above, reclamation = mitigation in some cases	
			62-330.301(4), F.A.C. – Conditions for Issuance of Individual and Conceptual Approval Permits	<i>(4) The standards and criteria used to determine whether the reasonable assurances required in this section and Rule 62-330.302, F.A.C., have been provided, including the provisions for elimination or reduction of impacts and mitigation to offset adverse impacts, are contained in Volume I, incorporated by reference in subsection 62-330.010(4), F.A.C., and Volume II, incorporated by reference in subsection 62-330.010(4), F.A.C., for the applicable District.</i>	
			62-342, F.A.C. – Mitigation Banks	Criteria that mitigation banks must meet in addition to the requirements of 62-330, F.A.C. to get a mitigation bank permit.	
			62-345, F.A.C. – Uniform Mitigation Assessment Method	Provides a method to determine wetland functional loss or gain from impacts or mitigation in wetlands and other surface waters	
			62-345.600(1)(b), F.A.C. – Time Lag, Risk, and Mitigation Determination	<i>(1) Time lag shall be incorporated into the gain in ecological value of the proposed mitigation as follows: (b) The time lag factor under this section shall be scored as 1 when evaluating mitigation for proposed phosphate and heavy mineral mining activities in accordance with this rule to determine compliance with Section 373.414(6)(b), F.S.</i>	
			AH I, section 10.3	Mitigation (see Applicant’s Handbook)	

IV. Corps of Engineers 404 Program Regulations: 33 C.F.R. Parts 320, 321, 322, 323, 325, 326, 328, 329, 330 and 332: Some of these provisions are referenced for informational purposes only and are noted in the table below.

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
	33 CFR 320.3(n)	General Regulatory Policies – Relationship to Section 402 permits. Informational , a COE function that will remain with the COE– Under Section 402(b)(6) - no NPDES permit will be issued if the Chief of Engineers if navigation and anchorage will be substantially impaired.	No comment – informational	No comment – informational	No comment – informational
	33 CFR 320.4	General Policies for evaluating permit applications – Informational , explains the type of review the COE goes through with citation to other applicable statutes.	No comment – informational	No comment – informational	No comment – informational
	33 CFR 320.4(d)	Water Quality - Applications will be evaluated for compliance with applicable WQS and effluent limits both during construction and subsequent operation of the proposed activity. Evaluation should include both point and non-point sources, noting that NPS control is assigned to the states.	62-4.246(1)-(3), F.A.C. – Sampling, Testing Methods, and Method Detection Limits for Water Pollution Sources	<i>(1) The Department shall require monitoring and sampling for pollutants reasonably expected to be contained in the discharge and to violate the water quality criteria in Chapter 62-302, F.A.C. (2) Field testing, sample collection and preservation, laboratory testing, including quality control procedures, and all record keeping shall comply with Chapter 62-160, F.A.C. (3) Subsections (4)-(11) of this rule apply only to permit applications, permits, monitoring reports, and other sources of data relating to discharges to surface waters.</i>	State law addresses the information described in 33 CFR 320.4(d). State law meets the federal requirement.
	33 CFR Part 321	Permits for Dams and Dikes in Navigable Waters of the US – Informational , notes that in addition to Section 9 Rivers and Harbors Act permits, Section 404 permits are also required.	No comment – informational	No comment – informational	No comment – informational
	33 CFR Part 322	Permits for Structures or Work in or affecting Navigable WOTUS – Informational , authorization of certain structures under Section 10 RHA require Section 404 permits.	No comment – informational	No comment – informational	No comment – informational
	33 CFR 322.3(c)	Activities Requiring Permits: Activities of Federal Agencies – Informational , describes the requirements for federal agencies to get authorization for activities in Navigable WUS.	No comment – informational	No comment – informational	No comment – informational
	33 CFR Part 323	Permits for discharges of dredged or fill material in to	Evaluated above in Part I.	Evaluated above in Part I.	Evaluated above in Part I.

✓	Citation	Description	Corresponding State Authority Citation	Language of State Authority/Description*	Comments on State authority
		WOTUS – This section includes the COE definitions, the list of activities requiring permits and the exemptions from needing permits, which are the same as the EPA definition.			
	33 CFR 323.5	Program Transfer to the States – Informational , describes the transfer of the program under 404(h), and the procedures for transfer.	No comment – informational	No comment – informational	No comment – informational
	33 CFR Part 325	Processing of Department of Army Permits – Describes the step by step process for processing DA permits including contents of application, public notices, conditions among other requirements. Some of these provisions are informational, some are requirements when needed for consistency.	Discussions with EPA are needed to determine which requirements are needed for consistency.	This information may be addressed in the sections above.	Discussions with EPA are needed to determine which requirements are needed for consistency. The noticing requirements and certain application contents may need to be addressed through rulemaking.
	33 CFR Part 326	Enforcement – Describes the requirements of an enforcement program for permit violations.	See enforcement analysis above in Section II.C.	See enforcement analysis above in Section II.C.	State has a comprehensive enforcement program. This will be useful when comparing our enforcement program to the federal program.
	33 CFR Parts 328 and 329	Definitions of WOTUS and Navigable Waters – Informational . Just to show where these are in COE regs.	No comment – informational	No comment – informational	No comment – informational
	33 CFR Part 330	Nationwide Permit Program – Informational .	No comment – informational	No comment – informational	No comment – informational
	33 CFR Part 332	Compensatory Mitigation for Losses of Aquatic Resources – The Mitigation Rule	See mitigation analysis above in Section III.I.	See mitigation analysis above in Section III.I.	See mitigation analysis above in Section III.I. State will address, through rulemaking, appropriate provisions of the 404(b)(1) guidelines for assessment of mitigation for mining projects, mitigation hierarchy, and establishment of a mitigation bank.

* Italicized language is directly from citation

† **40 CFR 233.51(b) With the following exceptions, any category of discharge is eligible for consideration for waiver:** (1) Draft general permits; (2) Discharges with reasonable potential for affecting endangered or threatened species as determined by FWS; (3) Discharges with reasonable potential for adverse impacts on waters of another State; (4) Discharges known or suspected to contain toxic pollutants in toxic amounts (section 101(a)(3) of the Act) or hazardous substances in reportable quantities (section 311 of the Act); (5) Discharges located in proximity of a public water supply intake; (6) Discharges within critical areas established under State or Federal law, including but not limited to National and State parks, fish and wildlife sanctuaries and refuges, National and historical monuments, wilderness areas and preserves, sites identified or proposed under the National Historic Preservation Act, and components of the National Wild and Scenic Rivers System.